



# NASA Procedural Requirements

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**NPR 2081.1**

Effective Date: February 17, 2004  
Expiration Date: February 17, 2009

**COMPLIANCE IS MANDATORY**

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## Nondiscrimination in Federally Assisted and Conducted Programs

**Responsible Office: Office of Diversity & Equal Opportunity**

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Effective Date:

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# Preface

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## P.1. PURPOSE

The purpose of this directive is to establish and convey procedures of the National Aeronautics and Space Administration (NASA or "the Agency") Office of Equal Opportunity Programs (OEOP) on:

- a. Processing administrative complaints of discrimination filed with NASA in any program or activity assisted by NASA not covered under the Department of Education/National Aeronautics and Space Administration/Department of Justice (DOJ), "Agreement Between National Aeronautics and Space Administration and Department of Education to Delegate Certain Civil Rights Compliance Responsibilities for Elementary and Secondary Schools and Institutions of Higher Education." [\[1\]](#)
- b. Processing administrative complaints of discrimination on the basis of disability filed with NASA regarding any program or activity conducted by NASA.
- c. Processing administrative complaints of discrimination filed with NASA regarding any education or training program or activity conducted by NASA.
- d. Conducting civil rights compliance reviews to ensure against discrimination in any program or activity assisted by NASA not covered under the Department of Education/National Aeronautics and Space Administration/Department of Justice, "Agreement Between National Aeronautics and Space Administration and Department of Education to Delegate Certain Civil Rights Compliance Responsibilities for Elementary and Secondary Schools and Institutions of Higher Education." [\[2\]](#)

This manual does not alter the agreement between NASA and the Department of Education designating the Department of Education responsible for certain specific civil rights compliance duties, with respect to elementary and secondary schools and institutions of higher education.

## P.2. APPLICABILITY/SCOPE

This NPG is applicable to NASA Headquarters and NASA Centers, including Component Facilities.

## P.3. AUTHORITY

- a. NPD 2090.5C, Nondiscrimination in Federally Assisted and Federally Conducted Programs of NASA - Delegation of Authority.
- b. NPD 3713.2G, Federal Equal Opportunity Programs Of NASA.

## P.4. REFERENCES

- a. 42 U.S.C. §§ 2000d - 2000d-7, as amended, Title VI of the Civil Rights Act of 1964.
- b. 42 U.S.C. §§ 2000e - 2000e-17, as amended, Title VII of the Civil Rights Act of 1964.
- c. 42 U.S.C § 2473 (c) (1), as amended, The National Aeronautics and Space Act of 1958.
- d. 20 U.S.C. §§ 1681-1688, as amended, Title IX of the Education Amendments Act of 1972.
- e. 29 U.S.C. § 794, as amended, Section 504 of the Rehabilitation Act of 1973.

- f. 42 U.S.C. § 6101, et seq., as amended, the Age Discrimination Act of 1975.
- g. 29 U.S.C. § 794d, as amended, Section 508 of the Rehabilitation Act of 1973.
- h. 5 U.S.C. § 552a, The Privacy Act of 1974.
- i. Executive Order 11478, Equal Employment Opportunity in the Federal Government, August 12, 1969.
- j. Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, November 2, 1980.
- k. Executive Order 13160, Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs, June 23, 2000.
- l. 28 CFR § 50.3, Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964.
- m. 28 CFR Part 42, Subpart F, Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs.
- n. 36 CFR Part 1194, Electronic and Information Technology Accessibility Standards.
- o. 14 CFR Parts 1250-1253, Nondiscrimination in Federally-Assisted Programs of NASA - Effectuation of Title VI of the Civil Rights Act of 1964 (Part 1250); Nondiscrimination on Basis of Handicap (Part 1251); Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance (Part 1252); and Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (Part 1253).
- p. 29 CFR Part 1614, Federal Sector Equal Employment Opportunity.
- q. 29 CFR Part 1691, Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance.
- r. Department of Education/National Aeronautics and Space Administration/Department of Justice, "Agreement Between National Aeronautics and Space Administration and Department of Education to Delegate Certain Civil Rights Compliance Responsibilities for Elementary and Secondary Schools and Institutions of Higher Education," 52 Fed. Reg. 43385 (November 12, 1987).
- s. Department of Justice, "Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs," 66 Fed. Reg. 5397-5410 (January 18, 2001) (hereinafter referred to as DOJ Executive Order 13160 Guidance Document).[\[3\]](#)
- t. Department of Justice, Coordination and Review Section, "Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes," (September 1998) (hereinafter referred to "DOJ Title VI Investigations Manual").[\[4\]](#)
- u. Department of Justice, Civil Rights Division, "Title VI Legal Manual," (September 1998) (hereinafter referred to as "DOJ Title VI Legal Manual").[\[5\]](#)
- v. U.S. Commission on Civil Rights, Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs, June 1996 (hereinafter referred to as "USCCR Title VI Report").
- w. NASA Policy Directive 1440.6G, NASA Records Management.
- x. NASA Procedural Requirements 1441.1D, NASA Records Retention Schedule.
- y. NASA Procedural Requirements 1620.1A, Security Procedural Requirements-- w/Change 1 (9/13/02)

## **P.5. CANCELLATION**

NPR 2090.1A, dated February 17, 2004.

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**/s/ Dr. Dorothy Hayden-Watkins**

# **Assistant Administrator for Equal Opportunity Programs**

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# CHAPTER 1. NASA Policy

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1.1. NASA Policy on Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments Act of 1972, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and the Age Discrimination Act of 1975, as amended - As set forth in NPD 2090.5C, it is NASA policy to ensure that no person in the United States shall, on the ground of race, color, national origin, sex, disability, or age, be excluded from participation in, be denied benefit of, or be subjected to discrimination under any program or activity receiving NASA financial assistance. No person in the United States shall, on the ground of disability, be excluded from participation in, be denied benefit of, or be subjected to discrimination in a NASA-conducted program or activity. (Authority: Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments Act of 1972, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and the Age Discrimination Act of 1975, as amended).

1.2. NASA Policy on Section 508 of the Rehabilitation Act of 1973, as amended - When developing, procuring, maintaining, or using electronic and information technology, NASA shall ensure, unless an undue burden would be imposed, or an exception as defined by the U.S. Architectural and Transportation Barriers Compliance Board exists, that the electronic and information technology allows, regardless of the type of medium of the technology, individuals with disabilities who are NASA employees to have access to and use of information and data that are comparable to the access to and use of the information and data by NASA employees who are not individuals with disabilities; and individuals with disabilities who are members of the public seeking information or services from NASA have access to and use of information and data that are comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities. (Authority: Section 508 of the Rehabilitation Act of 1973, as amended.)

1.3. NASA Policy on Executive Order 13160, June 23, 2000 - No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a NASA-conducted education or training program or activity. (Authority:.)

1.4. NASA Policy Based on 14 CFR §§ 1260.10(c)(4) , 1260.32(a),(c) - No grants or agreements with nonprofit institutions or organizations (including training grants or facilities grants) shall be entered into unless and until an assurance of the type set forth in NASA Form 1206, "Assurance of Compliance with the National Aeronautics and Space Administration Regulation Pursuant to Nondiscrimination in Federally Assisted Programs" has been obtained by the organization's president, chairperson of the board, or any official who is authorized to contractually bind the nonprofit institution or organization. NASA regulations provide flexibility in the type of assurance, allowing either the Form 1206 or another assurance to be considered valid. (Authority: 14 CFR §§ 1260.10(c)(4) , 1260.32(a),(c).)

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## CHAPTER 2. Definitions

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The following definitions apply to this manual:

### **2.1. Beneficiary**

- A person or group of persons who may receive or enjoy the benefits, services, resources, and information, or participate in the activities and programs assisted by NASA.

### **2.2. Complainant**

- Any person or group of persons who files with NASA a complaint that alleges discrimination in a program or activity assisted or conducted by NASA.

### **2.3. Complaint**

- A written allegation that discrimination is occurring or has occurred in a program or activity assisted or conducted by NASA. A complaint is a written statement to NASA (including an electronic message) alleging discrimination and requesting, directly or by implication, that NASA take action. The following are not complaints:

- a. Oral allegations.
- b. Anonymous correspondence.
- c. Inquiries that seek advice or information but do not seek action or intervention from NASA.

### **2.4. Complaint Resolution Letter**

- A written notice to the complainant and respondent signed by the Assistant Administrator, Office of Equal Opportunity Programs (OEOP), accompanying a Letter of Finding or voluntary agreement between the parties. This letter officially advises the complainant and the respondent of the findings regarding a complaint investigation or the resolution of a complaint through Alternative Dispute Resolution. Where appropriate, this letter identifies the actions the respondent must take to correct a violation.

### **2.5. "Complete" Complaint**

- A written statement that contains:

- a. The name, address, and telephone number of the complainant. For complaints alleging a violation of Executive Order 13160, the complaint must identify whether the complainant is a Federal employee and whether the complainant's involvement in the relevant education program was related to his or her employment.
- b. A description of the alleged discriminatory conduct in sufficient detail to inform the Agency as to the nature and approximate date of the alleged discrimination.[\[6\]](#)
- c. The complainant's signature or the signature of someone authorized by the complainant to sign on the complainant's behalf.

### **2.6. Data Request Letter**

- A written request to the complainant and/or respondent for information relevant to the investigation.

## **2.7. Discrimination**

- Different treatment or denial of benefits, services, rights or privileges to a person or persons because of their race, color, national origin, sex, disability, religion, or age, and by, or in conjunction with any program or activity funded or conducted by NASA. Discrimination also includes different treatment or denial of benefits, services, rights or privileges to a person or persons because of sexual orientation, or status as a parent by NASA in conjunction with any NASA-conducted education or training program or activity.

## **2.8. Federally Conducted Education and Training Programs**

- Any program and activity conducted, operated, or undertaken by NASA including, but is not limited to the following education and training programs: [\[7\]](#)

- a. Formal schools;
- b. Extracurricular activities;
- c. Academic programs;
- d. Occupational training;
- e. Scholarships and fellowships;
- f. Student internships;
- g. Training for industry members;
- h. Summer enrichment camps; and
- i. Teacher training programs.

## **2.9. Federal Financial Assistance**

- Includes, but is not limited to, money paid; rental or use of Federal property at below-market value; gift of Federal property; asset, forfeiture funds; Federal training; loan of Federal personnel, subsidies and other arrangements with the intent of providing assistance. Federal financial assistance does not include contract, guarantee, or insurance, regulated programs, licenses, procurement contracts at market value, or programs that provide direct benefits.

## **2.10. Formal School**

- Formal academic institutions operated directly by the Federal government (e.g., Department of Defense Dependents Schools, Department of Defense Domestic Dependent Elementary and Secondary Schools, and elementary or secondary schools operated by the Department of the Interior, Bureau of Indian Affairs).

## **2.11. Investigative Interview**

- Any conversation with an investigator or investigative staff during the course of a complaint investigation or compliance review for the purpose of obtaining information relevant to the issues in the case.

## **2.12. Investigative Plan (IP)**

- Planning document prepared by investigative staff prior to conducting a complaint investigation. This document provides a detailed "blueprint" of the actions investigative staff will take in completing a complaint investigation. At a minimum, the IP will include the following information for each complaint investigation:

- a. Jurisdictional Determination;
- b. Identification of Bases and Issues;



- c. Identification of Applicable Legal Theories;
- d. Information Request/Data Collection; and
- e. Determination of Whether Onsite Investigation is Necessary.

## **2.13. Investigator/Investigative Staff**

- Individual or individuals conducting complaint investigations and compliance reviews.

## **2.14. Legal Sufficiency Review (LSR)**

- A review of the findings and recommendations pertaining to a complaint or compliance review investigation for the purpose of ensuring:
  - a. The accuracy of the document's legal citations;
  - b. The appropriate translation of allegations to issues;
  - c. The delineation of jurisdiction and authority of NASA;
  - d. That all issues are resolved based on a preponderance of the evidence;
  - e. That the facts and evidence establishing issue resolution are material, relevant, and reliable;
  - f. That the findings of fact and conclusions of law reflect, and are consistent with, the appropriate legal theories and standards; and
  - g. That the recommended disposition resolves and disposes of all issues and matters.

## **2.15. Letter of Finding (LOF)**

- A written statement signed by the Assistant Administrator, OEOP, in which the issues and allegations, related facts and evidence, findings and legal conclusions identified by the OEOP in response to a complaint investigation of a respondent of NASA financial assistance are set forth in writing for the purpose of notifying the complainant and the respondent whether, and to what extent, a respondent or NASA has violated any civil rights requirements.

## **2.16. National Aeronautics and Space Administration (NASA)**

- Includes all NASA Headquarters operations, NASA Centers, and any other NASA Component Facilities to which the legal authority and responsibility have been delegated or assigned to manage, administer, or supervise any NASA program or activity, or any officer or employee of NASA to whom the Administrator has delegated the power and authority to carry out any of the functions or responsibilities under these procedures. NASA also may be referred to as "the Agency."

## **2.17. Recipient**

- Any state, political subdivision of any state, or instrumentality of any state or political subdivision (to include the District of Columbia and any U.S. territories and possessions), any public or private agency, institution, organization or any of their instrumentalities, or any individual (provided the individual is not the ultimate beneficiary) in any state, to whom a Federal department or agency extends financial assistance, directly or through another recipient, for any program or activity, including any successor, assignee, or transferee thereof. In the NASA context, this includes, but is not limited to, institutions of higher education, corporations, or nonprofit associations, receiving Federal financial assistance, through grants, cooperative, or Space Act<sup>[8]</sup> agreements with NASA. Note that recipients of Federal financial assistance do not include parties to procurement contracts with NASA such as purchase orders or other forms of standard procurement.

## **2.18. Respondent**

- For purposes of this manual, the term "respondent" denotes the NASA recipient of financial assistance or the NASA Center against whom discrimination is being alleged in a complaint.

## **2.19. Status as a Parent**

- The status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is a person with one or more of the following statuses:

- a. a biological parent;
- b. an adoptive parent;
- c. a foster parent;
- d. a stepparent;
- e. a custodian of a legal ward;
- f. *in loco parentis* over such an individual; or
- g. actively seeking legal custody or adoption of such an individual.

## **2.20. Undue Burden**

- a "significant difficulty or expense." In determining what is a significant difficulty or expense, NASA will consider the resources available to the program or component for which the product is being developed, maintained, used, or procured. See Architectural and Transportation Compliance Board's Final Rule on Electronic and Information Technology Accessibility Standards, 65 Fed. Reg. 80500 (Dec. 21, 2000), codified at 36 CFR 1194.4.

## **2.21. Voluntary Resolution/Corrective Action Agreement**

- A document which resolves a complaint.

## **2.22. Witness**

- The subject of an interview conducted as part of a complaint investigation or compliance review.

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## CHAPTER 3. Complaints Of Discrimination

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### 3.1. Introduction

3.1.1. This chapter sets forth Procedural Requirements for the following authorities:

- a. 42 U.S.C. §§ 2000d - 2000d-7, as amended, Title VI of the Civil Rights Act of 1964.
- b. 20 U.S.C. §§ 1681-1688, as amended, Title IX of the Education Amendments Act of 1972.
- c. 29 U.S.C. § 794, as amended, Section 504 of the Rehabilitation Act of 1973.
- d. 42 U.S.C. § 6101, et seq., as amended, the Age Discrimination Act of 1975.
- e. 29 U.S.C. § 794d, as amended, Section 508 of the Rehabilitation Act of 1973.
- f. Executive Order 13160, Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs, June 23, 2000.[\[9\]](#)

3.1.2. The processing of discrimination complaints includes the following steps, set forth in chronological order:[\[10\]](#)

- a. Complaint Receipt
- b. Complaint Acknowledgement
- c. Complaint Evaluation
- d. Alternative Dispute Resolution Efforts
- e. Complaint Investigation
- f. Complaint Resolution
- g. Monitoring and Oversight When Required

3.1.3. Each step in this process is described below. Procedural information unique to specific statutes, regulations, or Executive Orders is set forth in the appendices to this manual.

3.1.4. OEOP personnel will maintain and safeguard all records and documents relating to the Procedural Requirements set forth below, following the guidance provided in NPG 1441.1D, NASA Records Retention Schedule. This would include proposing any changes to current retention schedules and developing new retention schedules when necessary.

3.1.5. Unless otherwise stated, all days are calendar days.

### 3.2. Complaint Receipt

3.2.1. If a complaint alleging discrimination is submitted or filed with any NASA Center or OEOP, the filing date of the complaint is the earlier of the following: the postmark of the complaint; or the date the complaint is received by any NASA Center. The receiving NASA Center will indicate the receipt date on the complaint immediately upon the date received and refer the complaint to OEOP within 5 days of receipt.[\[11\]](#) If OEOP receives the complaint from a NASA Center, the receipt date of the complaint will be the date noted on the complaint. If OEOP receives the complaint directly from the complainant, the receipt date will be the postmark date on the complaint.

3.2.2. In order to be accepted by OEOP, all written complaints must be "complete complaints." A complete complaint must include:

- a. The name, address, and telephone number of the complainant (for complaints alleging a violation of Executive Order 13160, the complaint must identify whether the complainant is a Federal employee and whether the complainant's involvement in the relevant education program was related to his or her employment);
- b. A description of the alleged discriminatory conduct in sufficient detail to inform the Agency as to the nature and approximate date of the alleged discrimination;[\[12\]](#) and
- c. The complainant's signature or the signature of someone authorized by the complainant to sign on the complainant's behalf.

### 3.3. Complaint Acknowledgement

3.3.1. Upon receipt by OEOP, the incoming complaint will be assigned a case number and OEOP will establish a case file. The case opening date will be the date a complaint is received by OEOP.[\[13\]](#)

3.3.2. OEOP will acknowledge receipt of the complaint by a written acknowledgement letter to the complainant within 15 days of complaint receipt. OEOP will notify the respondent of OEOP's receipt of the complaint concurrent with the complainant's acknowledgement letter. In addition, OEOP will forward a copy of the complaint to the respondent.

3.3.2.1. The acknowledgement letter will, at a minimum, include:

- a. The date the complaint was received;
- b. The case number assigned;
- c. A statement that the complaint is under review to determine NASA jurisdiction;
- d. An agency contact name and number; and
- e. Any other information that may be specifically required by the appropriate statute and notice that the complainant may consult an attorney.[\[14\]](#)

3.3.2.2. The acknowledgement letter will state that the complaint will be evaluated and assure the complainant that he or she will be contacted within 30 days.

3.3.2.3. Where OEOP determines that a complaint is incomplete, the acknowledgement letter will advise the complainant of the information needed to complete the complaint and that the information must be submitted within 30 days of the date of receipt of the acknowledgement letter (see paragraph 3.4.4 for "Gathering Basic Information").

3.3.2.4. If a complainant does not respond to the request for information necessary to complete the complaint, the Assistant Administrator, OEOP, will administratively close the complaint. If OEOP closes an incomplete complaint for lack of a response from the complainant, OEOP will notify the complainant and the respondent of the closure in writing within 30 days of complaint closure.

### 3.4. Complaint Evaluation

3.4.1. The Assistant Administrator, OEOP, will delegate authority to conduct complaint evaluation activities to appropriate OEOP staff.

3.4.2. NASA's objective is to complete the complaint evaluation as promptly as possible. The time required will vary depending upon the nature of the complaint and the amount of information provided. The target date for completion of the complaint evaluation is 30 days from receipt of the complaint by OEOP. Many complaints will be evaluated faster and some may require additional time. If NASA determines it will need additional time to complete its complaint evaluation, it will notify the complainant no later than 25 days after complaint receipt.

3.4.3. Intake

3.4.3.1. OEOP will review each complaint to determine whether it is complete, timely filed, within NASA jurisdiction, subject to the authorities enforced by NASA, that the complainant has standing, and whether the complaint must be resolved based on an investigation or is appropriate for early resolution or preinvestigation settlement. As a general rule, all complaints accepted for processing will first be addressed through OEOP's Alternative Dispute Resolution (ADR) process before a formal investigation is initiated.

3.4.3.2. OEOP will make an appropriate referral of any complaints that are not within its jurisdiction or which are the subject of concurrent jurisdiction with another Federal, state, or local agency within 15 days of the determination for referral. The complainant will be notified of the referral in writing at the time the referral is forwarded to the appropriate agency. The respondent will likewise be informed.

#### 3.4.4. Gathering Basic Information

3.4.4.1. OEOP will examine other sources of information (e.g., statistical data or respondent information) to ensure that it has sufficient information to evaluate complaints appropriately. OEOP staff will provide appropriate assistance to complainants, including persons with disabilities and individuals who, as a result of national origin, are limited in their English proficiency (LEP), may need help in providing information that NASA needs. This will include foreign nationals with updated visa information and naturalized citizens who are currently working on a NASA research grant or grants and who may need help in providing information that NASA needs.

3.4.4.2. OEOP may contact the complainant by telephone to obtain missing necessary information. A record of contact summarizing the conversation shall be placed in the case file. In the alternative, OEOP will inform the complainant in writing of the information needed. If the necessary information is not provided within 30 days of the date of the notification letter, the complaint will be closed and the complainant so informed. In cases where the complainant raises more than one claim and the complainant has provided sufficient information on one or more but not all claims, only those claims for which the complainant has provided sufficient information will be processed.

#### 3.4.5. Jurisdiction and Issue/Subject Matter Identification

3.4.5.1. OEOP will identify the legal authority under which NASA has jurisdiction to process complaints.<sup>[15]</sup> These include:

- a. Programs and activities receiving Federal financial assistance from NASA under Title VI of the Civil Rights of 1964, as amended; Title IX of the Education Amendments of 1972, as amended; and the Age Discrimination Act of 1975;
- b. Programs and activities conducted by NASA under Sections 504 and 508 of the Rehabilitation Act of 1973, as amended;
- c. Education and training programs conducted by NASA, as defined in Executive Order 13160, DOJ Executive Order 13160 guidance and this procedural manual.

3.4.5.2. OEOP will identify the specific form of alleged prohibited discrimination based on the protected classification. With respect to NASA-assisted programs, NASA has authority to process allegations of certain forms of discrimination, based on the following protected classifications: race, color, national origin, sex, disability, and age (pursuant to Title VI, Title IX, Section 504 of the Rehabilitation Act, and the Age Discrimination Act). With respect to NASA-conducted programs, NASA has authority over certain forms of discrimination based on disability (pursuant to Section 504 of the Rehabilitation Act). With respect to NASA-conducted education and training programs and activities, NASA has authority to process allegations of certain forms of discrimination based on race, color, national origin, sex, disability, age, religion, sexual orientation, and status as a parent.

3.4.5.3. OEOP will identify the subject matter based on a specific practice or service involved in the alleged discrimination, e.g., denial of services or access to a covered program, harassment by the program's employees, and unequal services in a program. Even if discriminatory intent cannot be ascertained, OEOP will identify the practice, procedure, policy, or service that is alleged to have a disparate effect on one or more members of a certain protected class. Generally speaking, in identifying the subject matter, OEOP will look for allegations of one or more of the following:<sup>[16]</sup>

- a. Any difference in the quality, quantity, or manner in which a service or benefit is provided;
- b. Segregation in any part of a program or separate treatment in any manner;
- c. Restriction in the enjoyment of any advantages, privileges, or other benefits that are provided by the program;
- d. Different standards or requirements for participation or entry;
- e. Separate treatment in any manner related to receipt of services or benefits;
- f. Restriction of the membership of advisory or planning councils that are an integral part of Federally funded programs;
- g. Failure to accommodate the language needs of a limited-English-proficient person(s) (LEP);
- h. Failure to adequately advise person(s) in the eligible population of the existence of services or benefits;

- i. Use of criteria or methods of administration that would defeat or substantially impair the accomplishment of program objectives or would impact more heavily based on a protected classification;
- j. Discrimination in any aspect of employment;[\[17\]](#)
- k. Failure to provide reasonable accommodation to a qualified individual with a disability; and
- l. Failure to provide comparable access to electronic or information technology to an individual with a disability.

#### 3.4.6. Timeliness

3.4.6.1. To be timely, complaints must be filed within 180 days from the date the person knew or shall have known of the alleged discrimination.

a. NASA's regulations effectuating Title VI of the Civil Rights Act of 1964, state that "a complaint must be filed no later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Principal Compliance Officer or his or her designee." 14 CFR § 1250.106(b). Therefore, with respect to complaints alleging violations of Title VI, to be timely the complaint must be filed within 90 days from the date the person knew or shall have known of the alleged discrimination.

b. For purposes of these Procedural Requirements the "180-days" timeframe will be used since it is applicable in three of the other four statutes and Executive Order 13160. [\[18\]](#)

3.4.6.2. The filing date of a complaint is the earlier of the following:

- a. The postmark of the complaint; or
- b. The date the complaint is received by any NASA Component Facility or respondent.

3.4.6.3. Timely complaints include those where the complaint alleges a continuing discriminatory policy or practice. OEOP retains the authority to waive the timeliness requirement when it finds that good cause is shown. [\[19\]](#)

3.4.6.4. If a complaint is not filed in a timely manner, the Assistant Administrator, OEOP, or designee, may grant a waiver of the 180-day filing requirement under any of the following circumstances:

- a. The complainant could not reasonably be expected to know within the 180-day period that the act was discriminatory, and the complaint was filed within 60 days after the complainant became aware of the alleged discrimination.
- b. The complainant was unable to file a complaint because of illness or other incapacitating circumstances (e.g., incarceration) during the 180-day period, and the complaint was filed within 60 days after the period of illness or incapacitation ended.
- c. The complainant filed a complaint alleging the same discriminatory conduct within the 180-day period with another Federal, state, or local civil rights enforcement agency, and filed a complaint with NASA within 60 days after the other agency has completed its investigation or notified the complainant that it would take no further action.
- d. The complainant filed, within the 180-day period, an internal grievance alleging the same discriminatory conduct that is the subject of the NASA complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded.
- e. Unique circumstances generated by agency action have adversely affected the complainant.

3.4.6.5. If a waiver is not requested or is requested but not granted, the case will be closed and the complainant informed of the decision.

3.4.7. Complaint allegations with which NASA may not proceed further.

3.4.7.1. There are a variety of reasons why NASA may not proceed further with complaint allegations. These are described below: [\[20\]](#)

- a. The complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same respondent or other respondents that repeatedly have been found factually or legally insubstantial by NASA.
- b. The same allegations and issues of the complaint have been addressed in a closed NASA complaint or compliance



review.

c. The complaint has been investigated by another agency and the resolution of the complaint meets NASA standards (i.e., all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet NASA's standards).

d. The complaint allegations are foreclosed by previous decisions by Federal courts, the Secretary of Education, the Civil Rights Reviewing Authority, or NASA policy determinations.

e. The complainant decides to withdraw the complaint. If the complaint included class allegations, OEOP may:

- (1) Close the entire complaint;
- (2) Pursue resolution of the class allegations; and/or
- (3) Use the information to target future compliance review activity.

f. OEOP obtains information indicating that the allegations raised by the complaint have been resolved. In such cases, OEOP will attempt to confirm the resolution. If OEOP determines there are no current allegations appropriate for further complaint resolution, the complaint will be closed.

g. Litigation has been filed raising the same allegations previously filed in other complaints. Such cases may be refiled within 60 days following termination of the proceeding if there has been no decision on the merits or settlement of the complaint allegations. (Dismissal with prejudice is considered a decision on the merits.)

h. The same complaint allegations have been filed with another Federal, state, or local agency, or through a respondent's internal grievance procedures, including due process proceedings, and NASA anticipates that the Agency will provide the complainant with a comparable resolution process. The complainant shall be advised to refile within 60 days of the completion of the other agency's action. (Generally, NASA will not complete a de novo review of the case.)

i. OEOP obtains information that the complaint allegation is moot, and there are no class allegations.

j. OEOP determines that its ability to complete the investigation is being substantially impaired by the complainant's or injured party's refusal to cooperate. In such a case, the complainant or injured party must be contacted as soon as possible. If this does not resolve the matter, a letter will be sent to the complainant or injured party explaining why the failure to cooperate (including refusal to give permission to disclose identity) has made it impossible to investigate the complaint. Refusal to cooperate within 15 days of the date of the letter will result in OEOP closing the case; if the required information is not received within 20 days, the case will be closed.

k. A complaint over which NASA otherwise has jurisdiction may be closed when OEOP transfers or refers the complaint to another agency for investigation.

l. The death of the complainant or injured party makes it impossible to investigate the allegations fully.

3.4.7.2. Some complaints, because of their scope and nature, may require a large amount of resources. In such instances, the Assistant Administrator, OEOP, may consider treating such a complaint as a compliance review (See Chapter 4. Compliance Reviews Under the Civil Rights Act of 1964 (Title VI), the Education Amendments Act of 1972 (Title IX), the Rehabilitation Act of 1973 (Section 504), and the Age Discrimination Act of 1975, for more information on compliance reviews). If this option is selected, OEOP will discuss the decision with the complainant, close the complaint, assign a review number, and initiate the review as soon as possible. As part of this process, OEOP shall also consider whether any of the complaint allegations can be addressed immediately. The results of the review will be shared with the complainant upon completion.

3.4.7.3. If the Assistant Administrator, OEOP, determines that a compliance review is the most effective means of addressing multiple individual complaints against the same recipient, OEOP shall discuss the decision with the complainants, close the individual complaints, assign a review number, and initiate a review as soon as possible. Any outstanding individual allegations that cannot be promptly resolved shall be incorporated into the review. The results of the review will be shared with the complainants upon completion.

#### 3.4.8. Notifying the Complainant and Respondent of Evaluation Determinations

3.4.8.1. If OEOP does not proceed to complaint resolution, the letter to the complainant (and respondent) will state that the complaint is being closed and will explain the reason for the decision. The letter(s) will be signed by the Assistant Administrator, OEOP, or designee.

3.4.8.2. If the complaint has been resolved during the evaluation process, the complaint resolution letter to the complainant (and respondent) shall contain:

- a. The basis for the complaint (e.g., race, color, national origin, sex, disability, and/or age; and, in the case of complaints filed pursuant to Executive Order 13160, religion, status as a parent, or sexual orientation); of the allegations over which NASA has jurisdiction;
- c. A brief statement of NASA's jurisdiction over the complaint;
- d. An explanation of the basis for NASA's determination that the complaint has been resolved; and
- e. A copy of any agreement resolving the complaint.

3.4.8.3. If NASA decides to proceed with complaint processing, the evaluation letters to the complainant and the respondent will contain:

- a. The basis for the complaint;
- b. A brief statement of the allegations over which NASA has jurisdiction;
- c. A brief statement of NASA's jurisdiction over the complaint;
- d. An indication of when the parties will be contacted; and
- e. An offer to engage in ADR (settlement negotiations) to resolve the complaint. [\[21\]](#)

3.4.8.4. If the complainant has questions or concerns about OEOP's resolution determination, the complainant shall contact the Assistant Administrator, OEOP, to verify the appropriateness of the complaint resolution. The complainant shall be encouraged to address these concerns with as much specificity as possible, focusing on factual or legal questions that would change the resolution of the case.

3.4.8.5. The right to file a separate court action.

- a. The complainant shall be aware that a separate court action may be filed regardless of OEOP's findings, where a statutory right to file such an action exists. It shall be clear that, in resolving complaints, OEOP cannot and does not represent the complainant in the way that a person's private attorney would. OEOP acts as an impartial fact finder. If the complainant wishes to file a court action, he/she may do so through an attorney.
- b. A complainant alleging discrimination prohibited by the Age Discrimination Act of 1975 may file a civil action in Federal court only after exhausting administrative remedies. Administrative remedies are exhausted upon the earlier of either
  - (1) 180 days have elapsed since the complainant filed the complaint with OEOP, and OEOP has made no finding with regard to the complaint, or
  - (2) OEOP issues a finding in favor of the respondent. If OEOP issues a finding in favor of the respondent, OEOP will promptly notify the complainant and will provide additional information regarding the complainant's right to file a civil action.
- c. Complainants and respondents have the right to have a representative at all stages of the complaint procedure.

3.4.8.6. Prohibitions against intimidation or retaliation.

- a. A respondent may not intimidate or retaliate against anyone who has either taken action or participated in an action to secure rights protected by the civil rights laws enforced by OEOP.
- b. If any individual believes that he or she is being intimidated or retaliated against by a respondent because of the filing of a complaint or participating in the resolution of it, a complaint alleging such intimidation or retaliation may be filed with OEOP.

3.4.8.7. Investigatory uses of personal information. [\[22\]](#)

- a. OEOP processes complaints and conducts compliance reviews regarding discrimination on the basis of race, color, national origin, sex, disability, or age at institutions that receive Federal financial assistance from NASA. The resolution of complaints may involve the collection and analysis of personal information, such as student records (including academic standing) and, in some cases, employment records.



b. No law requires a complainant to give personal information to OEOP, and no sanctions will be imposed on complainants or other individuals who do not cooperate in providing information requested by OEOP in connection with its case-resolution process. However, if OEOP is unable to obtain information needed to investigate or to otherwise resolve allegations of discrimination, it may be necessary for OEOP to discontinue its complaint-resolution processing.

## 3.5. Alternative Dispute Resolution Efforts

3.5.1. Conducting Alternative Dispute Resolution (ADR) Activities (Note: The Assistant Administrator, OEOP, will designate authority to conduct ADR activities.)

3.5.1.1. ADR encompasses a range of problem-solving processes whose basic purpose is to resolve disagreements without litigation. Before undertaking a formal investigation, OEOP will pursue resolution through ADR of all complaints over which OEOP has jurisdiction.

3.5.1.2. If a resolution through ADR efforts cannot be reached within 45 days after OEOP has forwarded the complaint evaluation letter, or if efforts to achieve an informal resolution are futile, OEOP will initiate a formal investigation. However, OEOP will continue to seek resolution through ADR efforts whenever possible.

3.5.2. Offering ADR to the Complainant and Respondent.

3.5.2.1. OEOP will include in all evaluation letters for complaints on which it decides to move to case resolution, an offer to engage in ADR methods (resolution between the parties (RBP) or negotiated settlement agreement) to resolve the complaint.

3.5.2.2. OEOP will set forth a brief explanation of the processes for RBP and negotiated settlement and request that each party indicate in a written response whether it will consent to participate. If OEOP has not received a response within 10 days from a party, it will contact the nonresponding party by telephone to determine the party's willingness to participate in ADR proceedings.

3.5.2.3. If OEOP cannot obtain both parties' written consent to participate in ADR within 20 days after OEOP has forwarded the complaint evaluation letter, OEOP will initiate a formal investigation.

3.5.2.4. If OEOP determines that further ADR efforts may result in a timely resolution to the case (at any time after a formal investigation has been initiated), OEOP may resume efforts to achieve case resolution through ADR.

3.5.3. Attempting to Resolve the Complaint Through ADR

3.5.3.1. OEOP's primary objective in conducting ADR is to resolve the complainant's allegations of discrimination. Any approach, or combination of approaches, may be initiated at any time and multiple approaches may be used to resolve any complaint.

3.5.3.2. OEOP may use a variety of fact-finding techniques, which may include informal fact finding such as joint discussions with the complainant and respondent. Any negotiated settlement agreement for corrective action will specify the action, if any, to be taken by the parties to resolve the complaint. Implementation of settlement agreements will be monitored by OEOP.

3.5.3.3. Techniques for Conducting ADR

a. Case Planning, Efforts to achieve complaint resolution include staff such as Equal Opportunity Specialist is , Human Resources, and legal staff.<sup>[23]</sup> Case documentation must include, in writing, the specific allegations to be resolved and the expected internal timeframes.

b. Complaint Resolution Target Dates - NASA's objective is to resolve each case on its own merits in an appropriate and timely way. To accomplish this objective, OEOP will establish a target date of 45 days from the day OEOP forwarded the evaluation letter for each case. The initial target dates, any significant target date changes (more than 15 days), and the reasons for those changes shall be documented in the case file.

c. Resolution Between the Parties (see 3.5.2.1.) - Resolution between the Parties (RBP) facilitates the resolution of complaints by providing the parties involved the opportunity to resolve the allegations prompting the complaint. (Note: NASA Office of General Counsel legal review must be conducted prior to NASA management signing an agreement.)

(1) RBP may occur at any time during the complaint-resolution process.

(2) If the office determines that RBP is appropriate, and the complainant and the respondent (after being informed of the information above) are willing to proceed, the office will initiate RBP to facilitate an agreement between the respondent and the complainant.

(3) In RBP, OEOP does not sign, approve, or endorse any agreement reached between the parties; however, OEOP shall help the parties understand the different impacts of possible remedies. At the conclusion of RBP, OEOP shall obtain a copy of a statement signed by the complainant that the allegation has been resolved or a copy of any settlement agreement that has been signed by the complainant.

3.5.3.4. Once resolution of any allegation has been obtained, OEOP may close that portion of the complaint; other approaches may be utilized to resolve any outstanding allegations.

3.5.3.5. OEOP will not monitor the agreement but will inform the parties that if a breach occurs, the complainant has the right to file another complaint. If a new complaint is filed, OEOP will investigate allegations of discrimination, not allegations that the agreement has been breached. However, the 180-day limitation on timeliness of a complaint will be determined by the date of the alleged breach.

3.5.3.6. Communicate Decisions to Interested Parties - OEOP staff shall communicate with parties (complainants and respondents), as appropriate, regarding progress in resolving the complaint. Parties shall hear from OEOP on a regular basis regarding the status of any complaint not yet resolved. A record of these communications shall be included in the case file.

#### 3.5.4. Achieving Complaint Resolution Through ADR

##### 3.5.4.1. Developing the Agreement

a. Agreements must be in writing and signed by a person with authority to bind the respondent, reviewed by the General Counsel or designee (prior to signature by NASA management), and approved by the Assistant Administrator, OEOP, or designee.

b. An agreement must include the following:

- (1) Specific acts or steps the respondent will take to resolve the allegations;
- (2) The timetable for implementing each act or step; and
- (3) A specific timetable for submission of documentation.

c. If, as a result of investigation, NASA has sufficient information to conclude that there are violations other than those alleged, these shall also be addressed in the agreement.

d. A copy of the complaint resolution letter will be attached to the agreement when it is forwarded to the complainant and the respondent.

##### 3.5.4.2. Preparing Complaint Resolution Letters Where the Complaint is Resolved Through ADR

a. If the ADR process results in resolution of the complaint, OEOP will issue a complaint resolution letter within 10 days after both parties have signed the resolution agreement.

b. All resolution letters will be reviewed and signed by the Assistant Administrator, OEOP, or designee.

c. If resolution is the result of RBP, the allegations and other factual information must be reflected in the case file. A copy of any agreement between the parties shall be attached to the resolution letter.

d. For all other cases, the allegations, any civil rights violations established during the fact finding, pertinent factual information, and analysis, as appropriate, must be reflected in the case file and the resolution letter

e. The resolution letter must include sufficient information so that those receiving the document can understand how NASA reached its determination. Specifically, the complaint resolution letter shall contain:

- (1) The basis for the complaint (race, color, national origin, sex, disability, and/or age; and, in the case of complaints filed pursuant to Executive Order 13160, religion, status as a parent, or sexual orientation);
- (2) Each issue presented in the complaint;
- (3) A brief statement of the allegations over which NASA has jurisdiction;

- (4) A brief statement of NASA's jurisdiction over the complaint including the applicable legal authority and pertinent legal standards; and
- (5) A brief summary of the facts and evidence collected during the complaint investigation process.
- f. OEOB will consult with the complainant to ensure that the interests of the complainant are appropriately considered. Written information may be given to the respondent and the complainant if helpful to the negotiation process.
- g. A copy of any agreement must accompany the complaint resolution letter.

## **3.6. Complaint Investigations: Procedures and Requirements**

### **3.6.1. Investigative Process Requirements**

3.6.1.1. The Assistant Administrator, OEOB, will delegate authority to conduct complaint investigation activities to appropriate OEOB staff.

3.6.1.2. All investigations will be conducted impartially. Investigators will obtain all evidence pertinent and relevant to a determination of whether the complainant was subjected to discrimination in violation of applicable law and Executive Orders.

3.6.1.3. The facts, evidence, and findings of the investigation must result in a record that will withstand legal scrutiny.

3.6.1.4. When investigating complaints that allege discrimination in NASA-assisted or -conducted programs and activities, OEOB will be guided by established legal standards.

3.6.1.5. OEOB will complete all complaint investigations within 180 days after OEOB forwards notification letters to the complainant and the respondent of its intent to investigate.

3.6.1.6. Prior to conducting a complaint investigation, OEOB will develop an Investigative Plan (IP). The IP will serve as the blueprint for conducting the investigation. Review and/or revision of the IP will always be the first step in preparing for an investigation. The IP will encompass several key activities that must be accomplished to complete the complaint investigation in an effective manner. These are:

- a. Jurisdictional Determination
- b. Identification of Bases and Issues
- c. Complainant and Respondent Notification
- d. Identification of Applicable Legal Theories
- e. Information Request/Data Collection
- f. Onsite Determination and Notification

3.6.1.7. In general, the investigative process itself shall flow according to these actions, along with several others outside the context of the IP (including the interview process, analysis of the evidence, and the development of an Investigative Report (IR)). In the sections that follow, each aspect of the investigative process will be addressed.

### **3.6.2. Jurisdictional Information**

The jurisdictional determination shall be made during the initial complaint evaluation. This means determining that a covered basis of discrimination has been alleged in a timely fashion against a respondent, giving the Agency jurisdiction to investigate. For purposes of the IP, the jurisdictional information shall be included as part of the planning phase.

### **3.6.3. Identification of Bases and Issues**

As with the jurisdictional determination, the identification of bases and issues shall be completed during the complaint evaluation stage. Again, for purposes of the IP, the identification of the bases and issues shall be set forth in the planning section.

### **3.6.4. Complainant and Respondent Notification**

3.6.4.1. Once OEOB has decided to proceed with investigation of the complaint, it will notify the complainant and the

respondent that it has accepted the complaint for investigation.

3.6.4.2. The notification letter to the complainant and respondent will contain the following information:

- a. The basis for the complaint;
- b. A brief statement of the allegations over which NASA has jurisdiction;
- c. A brief statement of NASA's jurisdiction over the respondent to investigate the complaint; and
- d. An indication of when the parties will be contacted.

3.6.4.3. In complaints that raise limited (usually individual) allegations, OEOP may choose at its discretion to request a position statement from the respondent. This is a means for the respondent to offer a complete, detailed response to the allegations.

3.6.4.4. OEOP may make an offer in the notification letter to engage in ADR (settlement negotiations) to resolve the complaint, if the Center has agreed to engage in ADR and OEOP has determined that ADR is appropriate for the specific complaint.

### 3.6.5. Identification of Applicable Legal Theories

3.6.5.1. In conducting its complaint investigations and compliance reviews, NASA will seek to ensure that respondents are not engaging in prohibited discrimination.

3.6.5.2. Discrimination-related issues include:[\[24\]](#)

- a. Disparate Treatment;
- b. Disparate Impact;
- c. National Origin/Limited English Proficiency;
- d. Harassment;
- e. Reasonable Accommodation; and
- f. Retaliation.

### 3.6.6. Information Request/Data Collection[\[25\]](#)

3.6.6.1. OEOP will request documentary evidence from the respondent, develop interview questions based upon those data and any other available information, and conduct interviews with the complainant, respondent/agency personnel, and others as appropriate. The exact approach taken to data/information collection will vary from case to case depending on the issues raised, the extent to which relevant data are in the control of the respondent or others, and investigative strategies.

3.6.6.2. OEOP will gather, review, and evaluate all written information pertinent to the case, including records of both the respondent and the complainant. In keeping with this objective, OEOP will clearly label all evidence, both documents and written records of contact, with information identifying the case being investigated and the circumstances under which the evidence was obtained (e.g., where and when an interview was conducted, and who provided a given document).

3.6.6.3. OEOP will attempt to answer the following concerning the allegations:

- a. What happened? (Include who, when, where, and how.) Data must be gathered to determine whether an alleged event occurred or not.
- b. Why did it happen? On what basis? For what reason? The information gathered must help the investigator determine whether the reasons alleged in the complaint are accurate or not.

3.6.6.4. Pertinent DOJ Title VI Investigations Manual guidance states: "Initially, the investigator will want to request enough information from the complainant to have a clear picture of the allegations -- the who, what, when, where, and why -- the evidence that the complainant believes would help support his or her assertion that discrimination has occurred. Complainants can be very helpful in providing information on the types of records a respondent keeps that will lend support to their allegations. They can also suggest important witnesses to interview who could give testimony to support their allegations. In addition, the initial data request to the respondent shall ask the respondent to identify and

submit documentation to support its defenses and understanding of the events at issue." [\[26\]](#)

#### 3.6.6.5. Preparing the Data Request Letter

a. A data request letter will be prepared for the respondent requesting information relevant to the investigation. This letter may be used to initiate information collection or to request additional information after the primary information collection activity has been completed.

b. The information request letter may take any of several forms. It may be:

- (1) A comprehensive request for information covering all allegations made by the complainant and all data needed; or
- (2) A preliminary request for information from the respondent to assist the investigator in determining more specific information needed; or
- (3) A request for information that the respondent shall provide during the onsite visit; or,
- (4) A combination of (2) and (3).

c. An information request letter shall contain:

- (1) Identification by case number;
- (2) Citation to the statute and/or regulations under which the investigation is being conducted;
- (3) Reference to the Agency's legal authority for access to information;
- (4) The information requested;
- (5) An offer to settle or resolve the complaint, if appropriate; and,
- (6) A deadline for responding to the request for information.

d. Examples of specific information requested may include, but are not limited to:

- (1) A notice of all lawsuits (and, for recipients, complaints) filed against the recipient;
- >(2) A description of assistance applications that the recipient has pending in other agencies and of other Federal assistance being provided;
- (3) A description of any civil rights compliance reviews of the recipient during the preceding 2 years;
- (4) A statement as to whether the recipient has been found in noncompliance with any relevant civil rights requirements;
- (5) Information on the manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;
- (6) Data on the population eligible to be served by race, color, and national origin;
- (7) Information regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;
- (8) Information on the location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;
- (9) Data on the present or proposed membership, by race, color and national origin, in any planning or advisory body which is an integral part of the program;
- (10) Where relocation is involved, information regarding the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color, or national origin.

e. Where additional data, such as demographic maps, the racial composition of affected neighborhoods or census data, is necessary or appropriate, for understanding information, NASA will require such data only to the extent that it is readily available or can be compiled with reasonable effort.



- f. The respondent will be given a maximum of 15 days from the date of OEOP's request to submit information.
- g. The respondent must provide OEOP with access to all books, records, accounts, and other sources of information or facilities that OEOP finds necessary to determine compliance. This includes what an employee can supply orally as well as any written information he/she may have that is not maintained elsewhere by the respondent.<sup>[27]</sup>
- h. The respondent must submit information in any form OEOP stipulates as necessary for NASA's compliance activities.
- i. OEOP shall have access to a respondent's records, even if those records identify individuals by name and the names are not relevant to the investigation. To protect the confidential nature of the records, OEOP, for example, may permit the respondent to code names and retain a key to the code. However, OEOP shall inform the respondent that if at any time such a procedure impedes the timely investigation of the case, OEOP will need access to the unmodified records.
- j. Unless the request is made in the context of an ongoing complaint or compliance review investigation (see 5 CFR §1320.3), OEOP may not generally require a respondent to record information on a "form" or other standardized data collection instrument without obtaining prior approval for its use by the Office of Management and Budget. OEOP may, however, suggest suitable formats to be used at the discretion of the respondent as information collection instruments.
- k. Similarly, OEOP must consider Federal policies concerning paperwork burdens when requesting a respondent to do more than provide OEOP with access to normally maintained information. Requests that a respondent manipulate or compile information to meet an OEOP need must be reasonable and take into consideration the burden being placed on the respondent.
- l. If a respondent invites OEOP to come onsite and collect the requested information, and provides OEOP with sufficient access as determined by the Assistant Administrator, OEOP, to files, records, logs, and appropriate indexes for OEOP to extract the needed information, then the respondent has provided OEOP with the appropriate access.

#### 3.6.7. Onsite Determination and Notification

3.6.7.1. An onsite investigation normally is not necessary where all of the following conditions are present:

- a. Individuals are not the primary source of information needed (e.g., interviews are unnecessary or can be conducted by telephone);
- b. All needed information and documentation can be specified precisely in the information request letter and can be easily provided by the respondent;
- c. The respondent can provide written documentation to verify its position in its response to the Agency's information request letter; and,
- d. There is good reason to conclude that the complainant is the only person affected by the allegations of discrimination.

3.6.7.2. DOJ recommends considering the following in making a final determination as to whether an onsite investigation is necessary:

- a. Personal contact with the complainant and the respondent may yield information and clarification that the investigator might not otherwise discover by just reviewing written documents or speaking over the telephone;
- b. Obtaining a more accurate impression of the physical environment and general atmosphere of the respondent and the surrounding community may help in evaluating the evidence;
- c. More effective communication can be established with representatives of the respondent, which can be of assistance to the investigator in the present or future complaint investigation; and
- d. Some printed data can only be examined onsite for reasons of convenience, cost, format, or bulk.

3.6.7.3. Complainant Notification of Onsite Investigation: If it is decided that an onsite investigation is necessary, the notification to the complainant of the onsite investigation shall include, but not be limited to, the following:

- a. Anticipated date of the onsite visit.
- b. Time and place for interviewing the complainant.
- c. Request for the complainant to provide any additional information and documentation he/she considers relevant to the investigation. This shall include a list of witnesses whom the complainant believes have information relevant to the

allegations.

d. A timeframe to provide the additional information or documentation and list of witnesses.

3.6.7.4. Respondent Notification of Onsite Investigation: At this point in the review process, the respondent is already aware of the existence of the complaint, NASA's jurisdiction, the basis of the complaint, and NASA's legal authority to investigate the complainant's concerns. However, OEOP's letter notifying the respondent of the scheduled onsite visit shall:

a. Restate the allegations made by the complainant, the basis on which they are made, and the legal authority under which the complaint is being investigated.

b. State the section of the appropriate regulation that prohibits the discrimination (e.g., harassment and retaliation).

c. Provide the general time schedule under which the investigator will conduct the investigation.

d. Request additional information or data for the respondent to submit prior to the onsite, including a timeframe for submission of the information.

e. Identify additional data to review during the onsite, as a result of the investigative staff's review of information and data obtained prior to the onsite visit.

f. Request that all of respondent's staff to be interviewed and those responsible for the release of additional records be asked to be available as appropriate during the onsite investigation. Also, the letter shall request an orientation meeting with staff (state the date and time -- usually the second day of the onsite visit).

g. Identify the respondent's staff to be interviewed, if the investigator can determine this in advance. The investigator shall request that the respondent set up the interview schedule at convenient times and private locations during the onsite visit.

h. Suggest that the respondent designate a liaison person, if it has not already done so.

### 3.6.8. The Interview Process (Onsite)

3.6.8.1. OEOP will conduct interviews, take oral statements, and attempt to obtain independent written documentation to corroborate oral statements. The DOJ Title VI Investigations Manual states the following with regard to oral or "testimonial" evidence: "To obtain testimonial evidence, the investigator shall develop interview questions based on oral and written information and any other available data, and conduct interviews with the complainant, respondent's staff, and witnesses, as appropriate. Remember that, in gathering evidence to investigate and prove a case, the investigator shall not only look for evidence to support a prima facie case, but also to test the validity or truthfulness of any stated or anticipated defenses that the respondent has or may assert in the case. Therefore, the investigator will want to include a statement of the likely or enunciated defenses of the respondent and describe the evidence the investigator will need to test their validity. By addressing asserted or anticipated defenses "up front" when the investigator plan[s] the investigation and identifying the evidence the investigator will want to obtain, the investigator will save himself/herself (and the respondent) time and the possible aggravation of additional requests for data and interviews."<sup>[28]</sup>

3.6.8.2. OEOP will give notice of the following items before initiating the substantive part of an interview:

a. A general explanation of why the person is being interviewed, including who OEOP is, what law or laws are part of the current investigation and, where appropriate, a brief explanation of what is being investigated.

b. A brief notice regarding the potential uses of the information to be obtained from him/her, the Freedom of Information Act, and the Privacy Act.

c. If the witness is an employee of a respondent, notice of his or her right not to have anyone else present during the interview and his or her right to refuse to reveal the content of an interview.

d. The witness' right to personal representation during the interview by a person of his or her choice.

e. The regulatory provisions concerning prohibition of intimidating or retaliatory acts by a respondent.

f. In most cases, the respondent's counsel will be allowed to attend upper-level management interviews.

3.6.8.3. Before conducting an interview, the investigator shall know as much as possible about the purpose(s) intended to be served by the interview. The investigator shall make certain strategic decisions as to which witnesses to interview

for which purpose, and in what sequence the interviews are to be conducted. Although there is no set "rule of thumb" in determining who shall be interviewed, certain categories of people are advisable:

a. Persons who have first-hand knowledge (shall be interviewed first.)

(1) Persons who were directly involved in the situation that the complainant has alleged occurred.

(2) Persons who were not directly involved, but who have first-hand knowledge of the processes, events, and issues being investigated.

b. Persons who have second-hand knowledge (shall be interviewed later, if the investigator determines that it is necessary):

(1) Persons who make decisions that are relevant to the issues under investigation, but who were not actually involved in the situation or the decisions in question.

(2) Persons with some familiarity with the criteria used in the various processes and policies on the issue(s) under investigation.

3.6.8.4. OEOP will develop a written record of the interview session, including both telephone and in-person interviews, to preserve information obtained.

a. Whether notes are taken or a tape recorder is used during a particular interview depends on the investigative technique of the interviewer and the reactions of the interviewee. Tape recording will be done only with the consent of the interviewee. Regardless of the technique used during the interview, a written record of the interview must be created.

b. The record of the interview to be placed in the case file must contain the following information:

(1) Case identification (name and case number);

(2) Name and identification of the interviewee, interviewer, and any other persons present (include an explanation for the presence of any other persons);

(3) Date, time, and location of interview (including whether the interview was conducted by telephone);

(4) A record of whether the interviewee was informed regarding the Freedom of Information Act and the Privacy Act; and

(5) A written record reflecting the questions and responses obtained during the interview (this need not be a verbatim transcript but must accurately reflect the responses of the witness).

3.6.8.5. The witness' right to representation does not include a general right to have other persons present during the interview. Besides the OEOP investigator, the person being interviewed, and any needed interpreters, the only other person present during any interview shall be the witness' personally designated representative.

3.6.8.6. If the witness, other than an upper-level manager, identifies the respondent's counsel or a supervisor or manager for the respondent as a personal representative, the witness shall be informed that such a person may have a conflict of interest between that person's responsibilities to the respondent and the person's responsibilities as a personal representative

3.6.8.7. The witness shall also be informed that if a representative with responsibilities to the respondent appears to interfere with OEOP's ability to interview the witness or obtain requested information, the representative will be asked to leave. The witness shall then be asked again if he/she wishes to have a personal representative and whom the witness wishes to have as that representative.

3.6.8.8. If the witness identifies the same person as the representative, and OEOP has no other reason to believe the presence of the identified representative will interfere with the gathering of information, OEOP shall proceed with the interview. Investigators shall discuss these considerations with the witness prior to scheduling the interview.

3.6.8.9. Interviews with Minors (Persons Under 18) or Legally Incompetent Individuals

a. Generally, parental or guardian written consent is to be obtained when interviewing any persons under 18 years of age or otherwise legally incompetent, for example, mentally impaired individuals.

b. If a respondent refuses to allow students under 18 years of age to be interviewed without parental or guardian consent, even for general information, parental or guardian consent must be obtained.



c. If parents or guardians refuse to provide consent for an interview, and OEOP determines that the child's information is critical, OEOP may attempt to secure parental or guardian consent by inviting the parent or guardian to be present during the interview. If consent is denied, OEOP will not interview the minor child.

#### 3.6.8.10. Exit Interview

a. Upon completion of the onsite interview, the information will be reviewed onsite with the Investigative Plan as a check to make certain that all of the necessary information has been gathered. It is often both difficult and very costly to conduct an additional onsite because important documents or interviews are overlooked. At this stage of the investigation, new questions and issues may arise. To clarify these issues and answer these questions during the exit interviews, or by telephone or in writing, the investigator shall be certain to get the documents and conduct the interviews before leaving the site.

b. The exit interview is conducted separately for the complainant and the respondent. The exit interviews provide an opportunity to clarify any questions that may have arisen and to respond to any additional requests for information. The investigator shall explain that this exit interview does not mean the investigation is completed and that it may be necessary to return to seek additional information after reviewing the information collected during the onsite. The investigator shall explain to all parties the process the investigative staff will follow, if a violation is found.

c. The investigator may have already reached a conclusion as to whether the respondent is in compliance or noncompliance with the Agency's requirements. Shall this happen, it is important that the investigator not communicate that opinion during the exit interview, unless the investigator has been authorized to do so.

d. Examples of situations in which OEOP may wish to give the investigator approval may occur under the following conditions:

(1) The investigator has identified clear violations that the respondent shall begin addressing immediately, especially if they involve the safety of beneficiaries or others, or because of imminent harm to the complainant or others if the investigator delays. If the investigator does not want to say it is a violation, the investigator may wish to identify the problem as a "serious concern," and

(2) The investigator's supervisor has given the investigator permission to provide the respondent with this preliminary information at the exit interview. In that case, the investigator shall be prepared to provide the respondent with guidance (to the extent possible and if the investigator is asked) as to how the violation shall be corrected or what may be involved in developing a corrective plan for remedial and prospective relief. The benefit of this practice is that it allows OEOP to provide technical assistance to the respondent, and allows the respondent to take immediate action to correct clear violations, rather than waiting until the investigative findings are complete. The investigator shall consider this option (or the issuance of a partial letter of findings) when the rest of the investigation will obviously take some time to complete.

#### 3.6.9. Analysis of the Evidence (Post Onsite)<sup>[29]</sup>

3.6.9.1. Evidence standing alone does not prove a violation. It must be related to the policies and procedures of the respondent and issues under investigation.

3.6.9.2. To ensure the value of the collected and analyzed evidence investigative staff shall:

>a. Note when the document was received and from whom.

b. Make photocopies of all original documents.

c. Document the circumstances under which the evidence was collected; what questions elicited the evidence; whether any statistical techniques were applied to the evidence, and if so, what they were. If computer-readable material is gathered, the investigator shall obtain a file layout that describes what the data are, in what space or slot on the storage medium, and contact NASA's computer systems personnel to determine what documentation is necessary.

d. Always seek clarification where needed to understand any given document's written language, i.e., obtain definitions for abbreviations; identify words and phrases that are key to proper interpretation of the message; where words used within a given context do not take on an obvious meaning, ask interpretive questions; and do not make assumptions about the author's thinking.

#### 3.6.9.3. Determining Relevance

a. Read with a purpose. Know what information or answers the investigator is looking for and recognize their presence

or absence. Where the evidence:

- (1) Does not provide the answers needed,
- (2) Does not provide any direction to a source for the answers needed, or
- (3) Does not raise additional questions (issue-related), the evidence, at least for the moment, is not relevant. (However, the fact that evidence is not relevant at this time does not mean that it could not become relevant at a later stage of the investigation.)

b. Categorize the evidence by issue and/or allegation. (This is another test of the relevance of evidence.)

#### 3.6.9.4. Verifying the Evidence

- a. Develop a system for cross-checking.
- b. Identify conflicting information and resolve the conflict to the extent possible. (Conflicts shall be resolved in order to establish validity of the evidence.)

#### 3.6.9.5. Assembling the Evidence

- a. Develop an information flow pattern. Put the evidence together so that it illustrates a logical continuity of dependent, or related independent, occurrences leading to a conclusion.
- b. Be sure to "plug up the gaps" in any information the investigator has gathered to ensure completeness and thoroughness in assembling the evidence.

#### 3.6.9.6. Drawing Conclusions

- a. Allow the evidence to speak for itself.
- b. Test conclusions. Try to consider all possible rebuttal arguments by the respondent and the complainant.

3.6.9.7. The analysis of numerical evidence can range from easily calculated averages (or means) to very complex techniques that can be performed efficiently by computers. Generally, a statistician may need to be consulted on all but the most routine and basic quantitative analyses.

a. Analyses of statistical data shall be performed cautiously. All statistical tests have underlying assumptions that must be met if the test is to be valid. If the case shall go to administrative hearing or to court, someone will have to testify about the appropriateness, validity, and meaningfulness of the analyses.

b. For these reasons, it may be wise to obtain the services of a statistician before performing very complex statistical analyses. In some instances, talking with a consultant by telephone may be all that is necessary to ensure that the investigator is on the "right track." In other instances, the issues may be so complex that an expert may need to be consulted before any evidence is even collected.

c. Whenever a statistical consultant actually performs an analysis, the methodology, results, and implications shall be reported in writing and signed by the expert, preferably in a notarized affidavit. This protects the "standing" of the evidence, shall the expert not be available at a later time.

d. There are two kinds of analysis that can be easily performed by investigators using hand calculators. These are not definitive analyses that will make the case, but they are very useful as clues or leads and will indicate if the services of an expert are needed.

(1) The first is an average or mean. It is obtained by adding up all the scores and dividing by the number of persons receiving those scores. Scores may include salaries, arrests, and disciplinary actions.

(2) The second kind of analysis that the investigator can perform is the computation of percentages. A figure expressed as a percent represents the portion of a whole, where the whole can be expressed as 100 percent. Percentages are useful to compare relationships. As an example, the investigator may want to compare the percent that a group participates in receiving a benefit or service to the percent that represents their distribution in a relevant population or service area.

e. It is very important that the investigator choose similar, related, analogous denominators when making this comparative analysis. Otherwise, it may result in invalid or false conclusions.

#### 3.6.10. The Investigative Report

### 3.6.10.1. When to Prepare an Investigative Report

a. Ideally, an Investigative Report (IR) shall be prepared for all cases. At a minimum, an IR shall be prepared whenever a full investigation is completed. If an IR is not done in every case, it shall be prepared for all cases in which the Letter of Findings (LOF) will not stand on its own as support for the findings -- this will be the case in more complex or class cases that involve extensive analysis of written and/or testimonial evidence, rebuttal evidence from either party that must be addressed, or other factors that must be explained to support the findings. An IR must be prepared for all cases resulting in a Violation LOF.

b. If the case is straightforward, raises only limited issues, does not involve significant rebuttal by either party, and results in a compliance or "no violation" finding, an IR may not be necessary. In this case, a Closure Memorandum briefly outlining the basis for the "no violation" LOF will suffice. The memorandum shall address each allegation of the complaint so that the investigator can ensure that the allegations have all been addressed.

### 3.6.10.2. The IR is a detailed document that:

- a. Sets forth all facts pertinent to the case;
- b. Analyzes those facts in light of the complainant's allegation(s); and
- c. Recommends a determination as to the validity of the allegation(s) based on that analysis and the compliance status of the respondent.

3.6.10.3. The report shall be a document separate from the formal findings, whether they be in the form of Preliminary Findings or a formal LOF. Generally, the IR is not released to the complainant or the respondent except in conjunction with a judicial or administrative proceeding.

3.6.10.4. It may sometimes be appropriate to release sections of the IR to buttress the respondent's response to appeals of, and rebuttals to, the Preliminary Findings or formal LOF from the complainant or respondent. If the Assistant Administrator, OEOP, determines that the IR shall be released to anyone outside of NASA, the investigator shall consult with the NASA General Counsel to ensure that OEOP has complied with the provisions of the Privacy Act and Freedom of Information Act, i.e., that personally identifiable or confidential information is not released.

### 3.6.10.5. Purpose of the Investigative Report. The purpose of the IR is to:

- a. Organize and present the factual information collected during the investigation.
- b. Identify the location in the case file of the specific supportive documentation from which each statement, allegation, conclusion, or determination was drawn.
- c. Present an analysis of the information to determine the relevance of the facts to the allegations.
- d. Draw conclusions based on the analysis.
- e. Recommend corrective and/or remedial action, as appropriate.

### 3.6.10.6. Format of the Investigative Report.

a. Introduction - This section shall provide the reader with a historical overview of the actions taken on the case prior to OEOP's involvement and shall chart OEOP's activities prior to accepting the complaint for investigation.

b. Allegations - This section of the IR describes each individual or class allegation, stating it as succinctly and clearly as possible. For each allegation, the statutory or regulatory provision which the allegation would violate, if true, shall be cited, as well as the ground(s) upon which the allegation is based. Note: the investigator shall organize the complainant's allegations into a logical sequence that would be necessary to sustain a finding of compliance or noncompliance.

c. Methodology - This section explains how the investigation was conducted, what documents were reviewed, and which witnesses were interviewed. The investigator shall provide the reader with both quantitative and qualitative information about what was done with sufficient specificity to identify the types of documents reviewed (e.g., disciplinary files, rental applications, citizen complaints, and internal grievances) and the category and number of witnesses interviewed (e.g., three witnesses for the complainant, seven witnesses for the respondent [three management, four nonmanagement, including two witnesses at the scene of the incident giving rise to the complaint], and two individuals identified by the investigator).

d. Position Statement from the Respondent - No investigative report shall be completed or accepted without an entry

under this section of the IR. This information shall be obtained from primary source documents such as correspondence with the respondent, or interviews with the respondent's officials. Where attempts have been made to provide the respondent with an opportunity to reply to the complainant's allegations, but the respondent has failed to respond or provide any support for its position, a description of the investigator's efforts to let the respondent respond shall also be included in this section.

e. Findings of Fact - All facts relevant to the investigator's analysis and recommended determination in the case shall be set forth in this section. It is important both to the settlement/conciliation process and for establishing credibility that only clear, accurate, and factual evidence be included in this section. Facts shall be presented in a logical sequence, such as the chronological order of the events or by subject matter. Factual issues in dispute shall be resolved through examination of the relevant documents and the testimony in the record. Where appropriate, specific evidence supporting a finding shall be cited, e.g., "statement of John Doe, who was at the meeting with the Director on June 2, 1996." Conclusions shall not be drawn. This section is intended only to establish the factual and logical basis for a determination on the merits of the allegations; the investigator's analyses and conclusions will come in the next section.

f. Analysis and Recommended Determination

(1) In this section, the investigator conducts an analysis of the facts presented, and draws conclusions as to the validity of the complainant's allegations based on that analysis. Each fact shall be weighed against the allegation to which it pertains, and a prima facie case of discrimination either established based on the preponderance of the evidence or the allegation rejected as without merit. Each analysis, comparison, induction, deduction, generalization, or conclusion shall cite the supporting fact(s), by number, from the preceding section. All conclusions must be logical and reasonable reflections of the factual evidence as presented.

(2) In this section, the investigator shall also discuss any allegation(s) rejected by OEOP and the reasons for the rejection. However, the focus of the determination rests entirely on whether or not the weight of the evidence supports the complainant's allegation(s), and not on the existence or absence of procedural violations. Where those occur, unless they constitute a violation of one of the statutes OEOP enforces, they shall be brought to the attention of the appropriate NASA Component Facility.

g. Proposed Corrective/Remedial Action -- In this section, the investigator describes the action(s) (if any) required of the respondent in order to make the complainant whole and eliminate the discriminatory practices. The investigator may want to seek those remedies suggested by the complainant, but the investigator shall remember that the complaint is between the respondent and NASA concerning violation(s) of a Federal civil rights statute(s), regulation, or Executive Order. OEOP will ensure that the remedy sought will provide both remedial relief for identified victims and prospective relief (e.g., changes in policies and procedures, training for staff, development of adequate complaint procedures, and public notice to beneficiaries concerning new procedures) required to bring the respondent into compliance. Both remedial and prospective relief (corrective action) shall be specifically identified, not implied. OEOP also will ensure that all forms of relief granted are legally permissible.

## 3.7. Complaint Resolution

### 3.7.1. Completion of the Investigation and/or ADR:

3.7.1.1. OEOP will review, evaluate, and analyze the facts and evidence and apply the appropriate standards and legal theories to ensure findings and conclusions consistent with the applicable requirements and case law. The Assistant Administrator, OEOP, will review the IR and/or all relevant supporting material in the case file in order to determine what, if any, action is appropriate. If an investigation has been conducted, OEOP will issue a "Violation" or "No Violation" LOF not more than 60 days after the completion of an investigation.

3.7.1.2. OEOP may consider a complaint resolved when any of the following occur:

a. OEOP facilitates resolution between the respondent and complainant through ADR (Resolution Between the Parties (RBP), or negotiated corrective action agreement resolving the allegations raised by the complainant).

b. OEOP determines through complaint investigation that there is sufficient evidence to support a finding of a violation and negotiates an agreement with the respondent to take remedial/corrective actions(s) to resolve the allegations raised by the complainant.

c. OEOP determines through complaint investigation that there is insufficient evidence to support a finding of a violation.

3.7.1.3. Findings and remedial/corrective actions, if appropriate, will be set forth in the LOF that takes effect when

signed by the Assistant Administrator, OEOP. The allegations, any civil rights violations established during the fact finding, pertinent factual information, and analysis, as appropriate, must be reflected in the case file and LOF. The findings set forth in the LOF may be one of the following:

- a. A corrected violation finding (if OEOP concludes, or the respondent presents adequate documentation that an alleged violation that existed at the onset of the investigation was corrected prior to the conclusion of the investigation, the LOF will state that an alleged violation was voluntarily corrected by the respondent);
- b. A violation finding accompanied by an agreement for a specific remedial action or actions; or
- c. A "No Violation" finding.

3.7.1.4. The LOF must include sufficient information so that those receiving the document can understand how NASA reached its determination. Specifically, the LOF shall contain:

- a. The basis for the complaint (race, color, national origin, sex, disability, age, and/or reprisal); and, in the case of complaints filed pursuant to Executive Order 13160, religion, status as a parent, or sexual orientation;
- b. Each issue presented in the complaint;
- c. A statement of the allegations over which NASA has jurisdiction;
- d. A statement of NASA's jurisdiction over the complaint including the applicable legal authority and pertinent legal standards;
- e. A summary of the facts and evidence collected during the complaint investigation process;
- f. An explanation of the basis for NASA's determination with respect to each issue including a brief statement and analysis of the ultimate facts; and a definitive statement as to whether the respondent is or is not in compliance with respect to the specific issues. In selecting how much detail to include in the LOF, OEOP will consider a variety of factors, including the scope of the violation, length of plan implementation, conduct of the respondent, and respondent's or complainant's understanding of NASA's actions; and
- g. If OEOP facilitates an RBP or a negotiated settlement agreement, the LOF will reflect this.

### 3.7.2. Violation Findings

3.7.2.1. The Assistant Administrator, OEOP, will attempt to ensure that the complainant remains in the same position, or a substantially equivalent position, that he or she would have occupied absent discrimination.

3.7.2.2. The Assistant Administrator, OEOP, has the authority to order corrective and/or remedial action, where appropriate. As a general matter, if there has been a violation of any statutory, regulatory, or Executive Order authority that NASA enforces, the complainant shall be entitled to all appropriate, nonmonetary, equitable relief.

3.7.2.3. Upon a finding of a violation and the issuance of a violation LOF by the Assistant Administrator, OEOP, the respondent will be required to sign a corrective or remedial action agreement setting forth the specific corrective or remedial actions to be performed by the respondent and any timeframes in which these actions will be completed. This agreement must be signed by the respondent within 20 days after it has been issued by the Assistant Administrator, OEOP.

3.7.2.4. Where the respondent disagrees with an OEOP finding that the respondent is in violation of NASA regulations, the respondent must provide OEOP with a written analysis in support of its position within 15 days after receiving the LOF.

a. The respondent's rebuttal must include, and is to be limited to, the following:

- (1) The specific issue for which the respondent does not agree with OEOP's finding; and,
- (2) A concise statement of the basis for the disagreement, limited to either or both:
  - (i) a procedural defect in OEOP's collection of facts and evidence; or
  - (ii) a showing that OEOP's analysis of the facts and evidence was defective, including the application of the legal standards on which OEOP relied to reach its conclusion.

b. Respondent Rebuttal to Violation Findings



(1) The request for the directive to comply will be referenced in all subsequent agency accountability reports to the Administrator and the Assistant Administrator, OEOP, until compliance has been achieved.

(2) OEOP must respond to the respondent's rebuttal within 15 days after receipt. If OEOP agrees with and accepts the respondent's position, OEOP will issue a revised LOF within 15 days after its notice of acceptance. If OEOP rejects the respondent's rebuttal, OEOP must notify the respondent of the rejection and the reasons and re-advise the respondent of its obligation, as set forth in the LOF, as originally presented to the complainant.

(3) Where the respondent issues a rebuttal rejected by OEOP, shall the respondent fail or refuse to correct any violation cited in the LOF following OEOP's rejection of its rebuttal, the Assistant Administrator, OEOP, will notify the NASA Administrator, the Office of the General Counsel, and the appropriate NASA managers, documenting the basis for its finding and requesting that the Administrator issue a directive to comply.

#### 3.7.2.5. Violations Under Executive Order 13160 and Section 508 of the Rehabilitation Act Amendments of 1998

a. Section 508 of the Rehabilitation Act, like Executive Order 13160, applies only to federally conducted programs. As a general matter, remedial or corrective action under Section 508 will be similar to that under Executive Order 13160, in that NASA may be required to take remedial or corrective action upon a violation finding by the Assistant Administrator, OEOP.

b. The Assistant Administrator, OEOP, also will take all necessary steps to ensure that the corrective or remedial action ordered is implemented. If a determination is made that the complainant is not entitled to any corrective or remedial action, the Assistant Administrator, OEOP, will notify the complainant of this decision and the reasons for this determination.

If the Assistant Administrator, OEOP, does determine that the complainant is entitled to some form of remedial or corrective action, the Assistant Administrator, OEOP, will so notify the complainant in writing.

c. In the LOF, OEOP will make recommendations for any corrective and/or remedial action. A copy of the LOF will be sent to both the complainant and the respondent, including the employee who is the subject of the LOF.

d. Specific remedies under these authorities are likely to include placement in the next available education or training program of a comparable nature; the development of an individualized training opportunity; the cancellation of an unwarranted personnel action or the expungement of adverse materials from agency records; the awarding of a diploma, other certificate, or specific grade; and the provision of specific reasonable accommodations.

#### e. Under Executive Order 13160

(1) Any LOF with a violation finding will include language to ensure that complainants are aware that Section 8 of the Executive Order specifically provides that the order "is not intended, and shall not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees." Section 8 further provides, however, that the Executive Order is not intended "to preclude judicial review of final decisions in accordance with the Administrative Procedures Act, 5 U.S.C. 701, et seq."

(2) If a determination is made that any NASA employee has not complied with the Executive Order or any of its implementing rules, regulations, policies, or guidance, Section 4-402 of the Executive Order requires any action taken to discipline an employee, including removal, must be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Public Law No. 95-454, 92 Stat. 1111.

#### 3.7.2.6. Violations Under Title VI, Title IX, Section 504, and the Age Discrimination Act

a. If OEOP determines that the recipient has violated one or more provisions of the civil rights laws, and the recipient is unwilling to correct the violation(s), OEOP will promptly issue a violation LOF specifying the factual findings and the legal basis for the violation(s). OEOP will again attempt to negotiate a corrective action agreement.

b. If OEOP is still unable to obtain voluntary compliance, OEOP will move immediately to enforcement by either initiating administrative enforcement proceedings or referring the case to the Department of Justice. OEOP can move immediately to defer any new or additional Federal financial assistance to the recipient, and will begin administrative enforcement proceedings to terminate existing Federal assistance.[\[30\]](#)

#### 3.7.3. "No Violation" Findings

3.7.3.1. If a determination is made that there has been no violation of any statutory, regulatory, or Executive Order authority, a copy of the LOF also shall be sent to both the complainant and the respondent.

3.7.3.2. In such cases, although no action is required, a copy of the report shall nevertheless be sent to the appropriate agency official.

## **3.8. Monitoring and Oversight**

3.8.1. Following the issuance of a finding of discrimination, OEOP will monitor and

evaluate the respondent's corrective action activities to ensure an outcome that reflects compliance with the corrective action ordered in the LOF or agreed to in a settlement.

3.8.2. Monitoring is critical to ensure that all necessary actions are completed. NASA monitors the implementation of all agreements that include actions to be taken subsequent to the date of any agreement. Monitoring may or may not require an onsite visit.

3.8.3. Monitoring activities shall be undertaken as outlined in the agreement. The NASA Assistant Administrator, OEOP, or designee, may agree to modify the schedule or the terms of the agreement, if necessary. A memorandum that records the basis for such a modification shall be placed in the case file. Any modifications to the agreement must be appended to the original agreement.

3.8.3.1. The respondent and the complainant shall be notified, in writing, of significant modifications to the agreement and successful completion of the agreement.

3.8.3.2. If a respondent has failed to satisfactorily complete its agreement, the respondent and the complainant will be notified promptly in writing of this determination.

3.8.3.3. If OEOP and the respondent are unable to resolve any deficiencies during the implementation of the agreement, the Assistant Administrator, OEOP, will take appropriate action, including enforcement action pursuant to Title VI, Title IX, Section 504, and the Age Discrimination Act, or a Directive to Comply pursuant to Executive Order 13160 or Section 508 of the Rehabilitation Act.

3.8.3.4. When the respondent completes its program of corrective actions and compliance has been achieved, OEOP will notify the NASA Administrator, the NASA Assistant Administrator, OEOP, the NASA General Counsel, and NASA manager(s) or the NASA recipient head (i.e., highest ranking management official, e.g., Chief Executive Officer, President of the University), as appropriate, following which, the case will be closed.

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## **CHAPTER 4. Compliance Reviews Pursuant to the Civil Rights Act of 1964 (Title VI), the Education Amendments Act of 1972 (Title IX), the Rehabilitation Act of 1973 (Section 504), and the Age Discrimination Act**

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### **4.1. Policy**

4.1.1. NASA will be responsible for ensuring that its recipients are in compliance with all applicable policies of nondiscrimination in programs and activities receiving Federal financial assistance.

4.1.2. OEOP will continually monitor its recipients to ensure such compliance and shall establish procedures and systems as a method of ensuring such compliance.

4.1.3. NASA will ensure that all recipients have submitted a signed statement of assurance that all programs and activities will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

4.1.4. Compliance review investigations will be periodically scheduled by OEOP as part of its regular, systematic program of monitoring and evaluating whether, and the extent to which, recipients meet their Federal civil rights obligations.

4.1.5. As an integral element of its civil rights enforcement responsibility, OEOP routinely will maintain a regular, systematic program that includes:

4.1.5.1. Technical guidance and assistance to recipients with the aim of resolving civil rights problems and issues associated with recipient programs and activities, and

4.1.5.2. Monitoring and evaluations of whether, and the extent to which, recipients meet their obligations to ensure that they administer their programs and activities pursuant to applicable civil rights requirements.

4.1.6. In conducting compliance review investigations of NASA-assisted programs and activities, OEOP will be guided by the legal standards, policies, and requirements that have been established in Federal statutes, regulations, Executive Orders, policies, and case law decisions related to discrimination based on race, color, national origin, sex, age, or disability, as applicable to recipients of Federal financial assistance and Federally assisted programs and activities.

### **4.2. Definitions**

4.2.1. Compliance Review - A systematically planned and periodically initiated investigation that assesses and evaluates the civil rights and equal opportunity policies, procedures, and practices of an organization or its instrumentality, funded in whole or part by NASA to determine compliance with applicable civil rights statutes, regulations, standards, and policies.

4.2.2. Compliance Review Investigative Plan (CRIP) - A planning document prepared by investigative staff prior to conducting a compliance review. This document provides a detailed "blueprint" of the actions that investigative staff will take in completing a compliance review. At a minimum, the CRIP will include the following information for each compliance review:

a. Identification of Bases and Issues



- b. Identification of Applicable Legal Theories
- c. Information Request/Data Collection
- d. Determination of Whether Onsite is Necessary

4.2.3. Postaward Desk Audit Review - A structured review of compliance information obtained before or without going onsite after the award of financial assistance.

4.2.4. Postaward Onsite Review - A review that extends to all organizational components of a recipient organization or entity. A postaward onsite review is an in-depth examination of a recipient's entire program conducted periodically in a systemic fashion.

4.2.5. Preaward Desk Audit Review - A structured review of compliance information obtained before or without going onsite prior to the award of financial assistance.

4.2.6. Preaward Onsite Review - An extensive investigation of a recipient's program conducted in the field at program offices.

4.2.7. Program Review (PR) - A compliance review investigation that is limited to a particular recipient program.

### **4.3. Compliance Reviews: Procedural Requirements**

#### **4.3.1. Distribution of Responsibilities**

4.3.1.1. OEOP will be responsible for conducting compliance review investigations of all NASA recipients of Federal assistance. OEOP will exercise its discretion about whether the investigation will extend to all recipient programs or merely to one or more of a recipient's programs and activities.

4.3.1.2. In general, the purposes of compliance reviews include, but are not limited to:

- a. Identification of deficiencies, such as discriminatory barriers to participation or disparate treatment in participation, in recipients' delivery of program services to potential and actual program beneficiaries on the basis of race, color, national origin, sex, disability, or age.[\[31\]](#)
- b. Investigation of allegations of discriminatory barriers to participation or disparate treatment in participation.[\[32\]](#)
- c. Evaluation of recipients' efforts to provide beneficiaries of notice of civil rights protections, public education, program accessibility, and other regulatory requirements for compliance.[\[33\]](#)
- d. Identification of recipients' needs for technical assistance or [further] onsite reviews.[\[34\]](#)

4.3.1.3. The Assistant Administrator, OEOP, will decide whether to conduct a compliance review of a recipient based on consideration of:

- a. Data and information cited in one or more complaints or other reliable information sources;
- b. The receipt of a significant number of complaints that raise the same or similar issue(s) relating to a particular recipient program or activity;
- c. Research, including statistical data on racial/ethnic composition of program applicants or beneficiaries, initiated and conducted by OEOP; and
- d. Other legitimate factors and information including information pertaining to complaints and information gathered OEOP's research.

4.3.1.4. Generally, an investigation will be conducted for each compliance review. The investigation may result in:

- a. A Violation LOF if there is a violation or violation corrected; and
- b. A "No Violation" LOF if there is no violation.

#### **4.3.2. Voluntary Compliance and Conciliation**

OEOP will engage in voluntary compliance actions, where appropriate, at any stage of the compliance review process, and will provide technical assistance to facilitate a voluntary resolution of any noncompliance issues.

### 4.3.3. Timeframes

4.3.3.1. Unless otherwise stated, all days are calendar days.

4.3.3.2. OEOP will complete a postaward compliance review investigation within 180 days following the receipt of information from the recipient subject to review.

4.3.3.3. OEOP will issue a notice to the recipient subject to review not less than 60 days prior to the date that the compliance review activities will commence. The notice will advise the recipient of the date on which the compliance review will commence, the data and information necessary to conduct an efficient and effective compliance review, and the date on which the data and information are to be received by OEOP. The notice to the recipient will be sent concurrently to the appropriate NASA recipient(s).

4.3.3.4. The "start date" for a compliance review is the date the onsite investigation begins or, if there is no onsite investigation, the date information/data are first requested from the recipient. OEOP will establish a target date for completion of each review when it identifies the review site. OEOP may conduct one or more of the following types of compliance reviews on any recipient of NASA financial assistance: preaward desk audit review; preaward onsite review; postaward desk-audit review; and postaward onsite review.

### 4.3.4. Preaward Compliance Reviews: Guidelines and Procedures

4.3.4.1. DOJ recommends in its revised Title VI Legal Manual that agencies implement an internal screening process whereby agency officials are notified of potential assistance grants and are provided the opportunity to raise a "red flag" or concern about the potential grant recipient. Consistent with this recommendation, OEOP will screen a significant proportion of assistance applications through preaward compliance reviews. Such reviews will encompass the following activities:

- a. Review of assurances of compliance;
- b. Collection of data from targeted recipients; and
- c. Compliance determination.

#### 4.3.4.2. Reviewing Assurances of Compliance

a. Assurances serve two important purposes:

(1) They remind prospective recipients of their nondiscrimination obligations; and

(2) They provide a basis for the Federal Government to sue to enforce compliance with grant-related civil rights statutes. See United States v. Marion County Sch. Dist., 625 F.2d 607, 609, 612-13 (5th Cir.), reh'g denied, 629 F.2d 1350 (5th Cir. 1980), cert. denied, 451 U.S. 910 (1981).

b. DOJ Title VI Coordination Regulations require that agencies obtain assurances of compliance from prospective recipients. 28 CFR § 42.407(b). Regulations requiring applicants to execute an assurance of compliance as a condition for receiving assistance are valid. Grove City College v. Bell, 465 U.S. 555, 574-575 (Title IX assurances); Gardner v. Alabama, 385 F.2d 804 (5th Cir. 1967), cert. denied, 389 U.S. 1046 (1968) (Title VI assurances).

c. If an applicant refuses to sign a required assurance, the Agency may deny assistance only after providing notice of the noncompliance, an opportunity for a hearing, and other statutory procedures. 42 U.S.C. § 2000d-1; 28 CFR § 50.3 (c)II(a)1. However, the Agency need not prove actual discrimination at the administrative hearing, but only that the applicant refused to sign an assurance of compliance with Title VI (or similar nondiscrimination laws). Grove City, 465 U.S. at 575.

4.3.4.3. Data Collection Section 42.406(d) of the DOJ Title VI Coordination Regulations lists the types of data that shall be submitted to and reviewed by Federal agencies prior to granting funds. In addition to submitting an assurance that it will compile and maintain records as required, an applicant shall provide upon request:

- a. A Notice of all lawsuits (for recipients and complainants) filed against it;
- b. A description of assistance applications that it has pending in other agencies and of other Federal assistance being provided;
- c. A description of any civil rights compliance reviews of the applicant during the preceding 2 years; and
- d. A statement as to whether the applicant has been found in noncompliance with any relevant civil rights requirements.

#### 4.3.4.4. Compliance Determination

a. OEOP will make a written determination as to whether the applicant is in compliance with Title VI, as required under 28 CFR §42.407(b).

b. Where a determination cannot be made from the submitted data, OEOP will require the submission of additional information and take other steps necessary for making a compliance determination, which could include communicating with local government officials or community organizations and/or conducting field reviews.

c. Additional information OEOP will require where a determination cannot be made from the submitted data may include, but is not limited to, the following:

(1) Information on the manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;

(2) Data on the population eligible to be served by race, color, and national origin;

(3) Information regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;

(4) Information on the location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;

(5) Data on the present or proposed membership, by race, color, and national origin, in any planning or advisory body which is an integral part of the program;

(6) Where relocation is involved, information regarding the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color, or national origin.

(7) Where additional data, such as demographic maps, the racial composition of affected neighborhoods or census data, is necessary or appropriate, for understanding information, federal agencies shall specify, in their guidelines or in other directives, the need to submit such data. Such additional data shall be required, however, only to the extent that it is readily available or can be compiled with reasonable effort.

#### d. Deferral of the Decision Whether to Grant Assistance

(1) The "Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964," (the "Title VI Guidelines") specifically state that agencies may defer assistance decisions: "In some instances . . . it is legally permissible, temporarily to defer action on an application for assistance, pending initiation and completion of [statutory remedial] procedures--including attempts to secure voluntary compliance with Title VI." 28 CFR § 50.3 (c)I.a. Thus, deferral may occur while negotiations are ongoing to special condition the award, during the pendency of a lawsuit to obtain relief, or during proceedings aimed at refusing to grant the requested assistance.

(2) This interpretation is a reasonable, and even necessary, application of the statutory remedial scheme. The congressional authorization to obtain relief preaward would be sharply reduced, if not rendered a near nullity, if agencies could not postpone the assistance decision while spending the time needed to conduct a full and fair investigation and while seeking appropriate relief. Furthermore, the Attorney General's administrative interpretation is entitled to deference. See, e.g., Chevron U.S.A. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-45 (1984).

(3) The Title VI Guidelines recommend that agencies adopt a flexible, case-by-case approach in assessing when deferral is appropriate, and consider the nature of the potential noncompliance problem. Where an assistance application is inadequate on its face, such as when the applicant has failed to provide an assurance or other material required by the Agency, "the Agency head shall defer action on the application pending prompt initiation and completion of [statutory remedial] procedures." 28 CFR § 50.3 (c)II.a.1. Where the application is adequate on its face but there are "reasonable grounds" for believing that the applicant is not complying with Title VI, "the Agency head may defer action on the application pending prompt initiation and completion of [statutory remedial] procedures." Id. (c)II.a.2 .

(4) When action on an assistance application is deferred, remedial efforts "shall be conducted without delay and completed as soon as possible." Id. I.A. Agencies shall also be cognizant of the time involved in a deferral to ensure that a deferral does not become "tantamount to a final refusal to grant assistance." Id. (c)II.c.. The agency shall not

completely rule out deferrals where time is of the essence in granting the assistance, but shall consider special measures that may be taken to seek expedited relief (e.g., by referring the matter to the DOJ to file suit for interim injunctive relief).

#### 4.3.4.5. Preaward Authority of Recipients vis-a-vis Subrecipients

a. The Title VI Guidelines provide that the "same [preaward] rules and procedures would apply" where a Federal assistance recipient is granted discretionary authority to dispense the assistance to subrecipients. Id. (c)III: "[T]he Federal Agency shall instruct the approving agency -- typically a state agency -- to defer approval or refuse to grant funds, in individual cases in which such action would be taken by the original granting agency itself. . . .

Provision shall be made for appropriate notice of such action to the Federal Agency which retains responsibility for compliance with [Title VI compliance] procedures."

b. Thus, the Title VI Guidelines support Federal agencies requiring that recipients and subgrants obtain assurances of compliance from subrecipients. When the recipient receives information preaward that indicates noncompliance by an applicant for a subgrant, recipients may defer making the grant decision, may seek a voluntary resolution and, if no settlement is reached (after complying with statutory procedural requirements), may refuse to award assistance.

#### 4.3.5. Postaward Compliance Reviews: Guidelines and Procedures

4.3.5.1. Under 28 CFR § 42.407, NASA must "establish and maintain an effective program of postapproval compliance reviews regarding approved new applications, applications for continuation or renewal of assistance and all other federally assisted programs. . . . In carrying out this program, agency personnel shall follow agency manuals which establish appropriate review, procedures, and standards of evaluation." 28 CFR § 42.407(c)(1).

The regulation further states that "[t]he results of postapproval reviews shall be committed to writing and shall include specific findings of fact and recommendations. A determination of the compliance status of the recipient reviewed shall be made as promptly as possible." 28 CFR § 42.407(c)(2).

#### 4.3.5.2. Selection of Targeted Recipients

a. The process of conducting postaward compliance reviews begins with the selection of targeted recipients. The following guidance on selecting recipients is excerpted from DOJ's Title VI Investigative Manual. It is intended to provide background and context for this step in the compliance review process.

(1) Federal agencies have broad discretion in determining which recipients and subrecipients to target for compliance reviews. However, this discretion is not unfettered. In United States v. Harris Methodist Fort Worth, 970 F.2d 94 (5th Cir. 1992), the Fifth Circuit Court of Appeals found that a Title VI compliance review involves an administrative search and, therefore, Fourth Amendment requirements for reasonableness of a search are applied. The court looked at

- (1) whether the proposed search is authorized by statute;
- (2) whether the proposed search is properly limited in scope; and
- (3) how the administrative agency designated the target of the search.

(2) The Harris court suggested that selection of a target for a compliance review will be reasonable if it is based either on

- (1) specific evidence of an existing violation,
- (2) a showing that "reasonable legislative or administrative standards for conducting an . . . inspection are satisfied with respect to a particular [establishment]," or
- (3) a showing that the search is "pursuant to an administrative plan containing specific neutral criteria." Id. at 101 (citations omitted).
- (3) Agencies are cautioned that they shall not select targets randomly for compliance reviews but, rather, they shall base their decisions on neutral criteria or evidence of a violation.

b. In developing targets for compliance reviews, the following are some issues for consideration:

(1) Issues targeted in NASA Strategic Plans and all Agency planning documents, including but not limited to, all performance-based strategic planning documents, Agency Enterprise planning documents, and Center Functional Office strategic plans;

- (2) Issues frequently identified as problems faced by program beneficiaries;
- (3) Geographical areas that may be targeted because of the many problems beneficiaries are experiencing or because a NASA Center has not had a "presence" there for some time;
- (4) Issues raised in a complaint or identified during a complaint investigation that could not be covered within the scope of the complaint investigation;
- (5) Problems identified to the Center by community organizations or advocacy groups that are familiar with actual incidents to support their concerns;
- (6) Problems identified to the Center by its block grant recipients; and
- (7) Problems identified to the Center by other Federal, state, or local civil rights agencies.

c. It shall not be assumed that simply because no complaints from a particular segment of beneficiaries, or those in a particular area, have been received, that problems do not exist. In fact, it is likely that people in underserved communities will not be aware of their rights to either program services or to file a complaint for a denial of those services.

#### 4.3.5.3. Overview of the Compliance Review Investigative Process

a. The development of a detailed Compliance Review Investigative Plan (CRIP) will serve to better ensure that all planned compliance reviews meet their stated goals and objectives. At a minimum, the CRIP shall include the following sections:

- (1) Identification of Bases and Issues;
- (2) Identification of Applicable Legal Theories; and
- (3) Information Request/Data Collection.

b. In addition to the CRIP, the following actions shall be taken in preparing the compliance review:

- (1) Determination of Whether Onsite is Necessary; and
- (2) Notification Letter to the Recipient.

c. In general, the investigative process itself shall flow according to these actions, along with several others outside the context of the CRIP that will take place during the investigation and after it has been conducted. These include:

- (1) The interview process;
- (2) Analysis of the evidence; and
- (3) Development of an IR.

d. In general, compliance reviews and complaint investigations will follow the same guidelines and procedures for identification of applicable legal theories, information request/data collection, determination of whether an onsite is necessary, notification, and analysis of evidence. (For complete discussions on these topics, see Section 3.6.) However, additional information specific to the compliance review context on identification of bases and issues and the interview process is presented below.

#### 4.3.5.4. Identification of Bases and Issues

a. Identify the bases, including race, color, national origin, sex, disability, or age, on which the compliance review will be focused.

b. Develop a general list of investigative goals/objectives. The DOJ Title VI Investigations Manual identifies inquiries of importance in preparing an investigative plan. These include:

- (1) Does the recipient have a complaint procedure that is easy to use and is accessible to the public?
- (2) How are members of the public notified of how they can file a complaint if they believe they have been discriminated against by the recipient?
- (3) Does the complaint procedure provide for an unbiased investigation of the complaint, allow input of the complainant and his/her witnesses, and an appeal if the complainant is not satisfied with the results?



(4) Are complainants advised that they can file a complaint with NASA if they are dissatisfied with the results of the recipient's finding/resolution of their allegations?

(5) Does the recipient conduct community outreach, i.e., does it make all segments of the community (including minority members and those who are not fluent in English) aware of its programs, who can participate, and how? and

(6) Has it contacted local organizations, such as churches, community groups, civil rights or advocacy groups, that could assist in making potential beneficiaries aware of the recipient's programs?

#### 4.3.5.5. Information Request

a. NASA Title VI regulations state the following with regard to "compliance information:"

(1) Each responsible NASA official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(2) Compliance reports. Each recipient shall keep such records and submit to the Principal Compliance Officer or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Principal Compliance Officer or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part

(3) Each recipient shall permit access by the Principal Compliance Officer or his designee during normal business hours to such of its books, records, accounts and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part." 14 CFR § 1250.105(a)-(c).

b. Consistent with DOJ and NASA regulations, information requested for the purposes of making a compliance determination of a recipient postaward may include, but is not limited to, the following:

(1) Information on the manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;

(2) Data on the population eligible to be served by race, color, and national origin;

(3) Information regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;

(4) Information on the location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;

(5) Data on the present or proposed membership, by race, color, and national origin, in any planning or advisory body which is an integral part of the program;

(6) Where relocation is involved, information regarding the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin.

(7) Where additional data, such as demographic maps, the racial composition of affected neighborhoods or census data, is necessary or appropriate, for understanding information, federal agencies shall specify, in their guidelines or in other directives, the need to submit such data. Such additional data shall be required, however, only to the extent that it is readily available or can be compiled with reasonable effort.

#### 4.3.5.6. The Interview Process

a. Development of a list of interview subjects. In its Title VI Investigations Manual, DOJ notes that, often, the only way to ensure that investigative goals and objectives, such as those listed above, are met is to contact community members directly and interview them concerning these issues. DOJ recommends that interviews not be limited to names of persons provided by the recipient. Rather, an attempt shall be made to independently confirm information provided by the recipient concerning its outreach efforts and the community's awareness of its complaint procedures.

b. The list of potential interviewees may include the following:

(1) Recipient Officials;



(2) State and local civil rights organizations; and

(3) Community Organizations.

#### 4.3.5.7. Compliance Review Findings

a. OEOP will notify the recipient and the appropriate NASA Center in writing of the findings of the compliance review within 30 days following the completion of the compliance review investigation. The LOF shall identify:

(1) Each issue investigated during the review;

(2) The facts and evidence collected and analyzed in relation to each issue;

(3) The findings of fact and conclusions of laws as related to each issue, including whether or not the Agency is in compliance relative to the issue(s); and

(4) Any actions the Agency must take to remedy any findings of noncompliance as related to the issues.

b. Within 30 days following receipt of the compliance review investigation LOF, the recipient will be required to provide notice to OEOP of the actions it will undertake to remedy any findings of noncompliance.

c. When OEOP issues an LOF, OEOP will send a copy of the letter to the appropriate NASA Center Director. To the extent that the compliance review was initiated in response to complaints, and to the extent appropriate and lawful, OEOP will notify the complainant of the findings of the compliance review and of the actions taken or being taken to remedy the discrimination.

#### d. Findings of Noncompliance

(1) When OEOP issues a noncompliance LOF following a compliance review investigation, OEOP will monitor the recipient until compliance has been achieved. When all corrective actions are completed, the review will be closed.

(2) If OEOP concludes, or the recipient presents adequate documentation that a violation noted during the review was corrected prior to review completion, the compliance review report and the letter of findings must state that a violation existed at the time of the review, but that it was voluntarily corrected by the recipient.

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## **CHAPTER 5. Enforcement Action Pursuant to the Civil Rights Act of 1964 (Title VI), the Education Amendments Act of 1972 (Title IX), the Rehabilitation Act of 1973 (Section 504), and the Age Discrimination Act**

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### **5.1. Violation Determination**

5.1.1. In general, if OEOP determines that the recipient has violated one or more provisions of the civil rights laws, and the recipient is unwilling to correct the violation(s), OEOP will promptly issue a Violation LOF specifying the factual findings and the legal basis for the violation(s).

5.1.2. OEOP will again attempt to negotiate a corrective action agreement. If OEOP is still unable to obtain voluntary compliance, OEOP will move immediately to enforcement by either initiating administrative enforcement proceedings or referring the case to DOJ. OEOP can also move immediately to defer any new or additional Federal financial assistance to the recipient, and will begin administrative enforcement proceedings to terminate existing Federal assistance.

5.1.3. The determination of the appropriate resolution of the complaint must be approved by the Assistant Administrator, OEOP, or designee. The Violation LOF will be prepared with appropriate consultation with the Office of General Counsel (OGC) and reviewed and signed by the Assistant Administrator, OEOP.

5.1.4. The draft Violation LOF, and other documentation as appropriate, will be shared electronically with the OGC and any other NASA office deemed appropriate by the Assistant Administrator, OEOP. It is anticipated that this consultation process will be completed within 30 days. As soon as concurrence is obtained, OEOP will issue the LOF [\[35\]](#)

5.1.5. If OEOP is unable to achieve voluntary compliance, NASA will initiate enforcement action. OEOP may:

- a. Initiate administrative proceedings to suspend, terminate, or refuse to grant or continue NASA financial assistance to the recipient; and
- b. Refer the case to DOJ for judicial proceedings to enforce any rights of the United States under any law of the United States.

### **5.2. Initiating Administrative Enforcement Proceedings Where Appropriate**

5.2.1. If administrative proceedings are initiated, and the recipient has been notified in writing of NASA's intention to impose sanctions, including terminating, deferring, or refusing to grant or continue assistance because of failure to comply, the notice of imposition of sanctions and Notice of Opportunity will be issued within 30 calendar days after notification by OEOP that negotiations have been unsuccessful.

5.2.2. Under NASA regulations, no order suspending, terminating, deferring, or refusing to grant or continue Federal financial assistance shall become effective until:

- a. The Assistant Administrator, OEOP, has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means OEOP will:

- (1) Notify the recipient of its failure to comply and of the action NASA will take to affect compliance;

(2) Provide the recipient at least 10 days from the mailing of the notice before taking action; and

(3) During the 10-day period, NASA may make additional efforts to persuade the recipient or other person to comply and to take such corrective action, as may be appropriate.

b. There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by NASA regulation;

c. The action has been approved by the Administrator pursuant to 14 CFR Part 1250.109(e); and

d. The expiration of 30 days after the Administrator has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances, and the grounds for such action (Pub. L. 88-352, Title VI, Sec. 602, July 2, 1964, 78 Stat. 252.)

5.2.3. If an administrative proceeding is initiated, a team will be established to prosecute the case.

5.2.4. Administrative enforcement proceedings will follow the procedures set forth at 14 CFR 1250, §§108-109.

### **5.3. Referral to the Department of Justice Where Appropriate**

5.3.1. If there appears to be a failure or threatened failure to comply, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance may be effected:

a. By the suspension or termination of or refusal to grant or to continue Federal financial assistance; or

b. By any other means authorized by law. Such other means may include, but are not limited to:

(1) A referral to DOJ with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under state or local law.

c. If post-LOF negotiations do not result in an acceptable agreement, the Assistant Administrator, OEOP, will notify the NASA Administrator that the office will issue a letter informing the recipient that NASA is recommending enforcement action by DOJ.

5.3.2. OEOP will consult with DOJ as appropriate.

5.3.3. The target date for completion of referral to DOJ is 30 days after the office has notified the NASA Administrator that negotiations have failed.

### **5.4. Moving to Enforcement for Failure to Implement Agreement**

5.4.1. Where the recipient has failed to implement its corrective action agreement, it is not necessary to prepare a LOF if findings on the underlying violation have already been made.

5.4.2. Whenever OEOP determines that voluntary compliance cannot be achieved, it will notify the recipient and prepare a brief information memorandum, including a summary of the recipient's Federal financial assistance, for the Assistant Administrator, OEOP.

5.4.3. If deferral is contemplated, the recipient must be notified 30 days before a notice of an imposition of deferral can be issued. The documents provided to the Assistant Administrator, OEOP, may be supplemented by a detailed description of how the recipient has failed to implement its agreement.

5.4.4. These documents shall be shared electronically with the Assistant Administrator, OEOP. That office will provide information to the OGC, as appropriate.

### **5.5. Moving to Enforcement for Denial of Access**

5.5.1. Where the recipient has denied access to information, no LOF is necessary to proceed to enforcement. However, if deferral is contemplated, the recipient must be notified 30 days before notice of an imposition of deferral can be

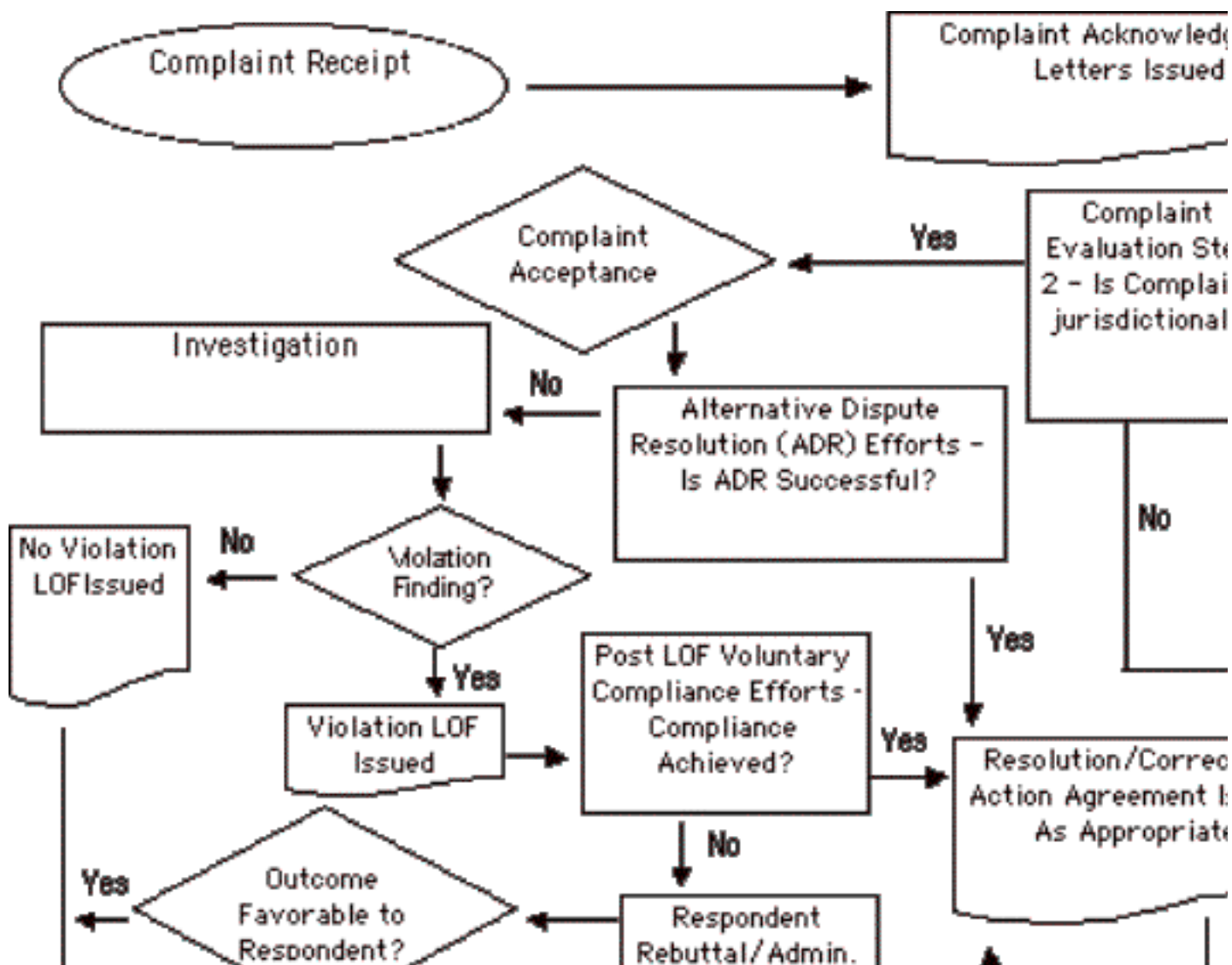
issued.

5.5.2. As soon as OEOP concludes that the recipient will not voluntarily provide access, it will notify the recipient of OEOP's determination and OEOP's intention to recommend enforcement.

5.5.3. OEOP will then prepare a draft letter, which may include notice of NASA's intention to impose deferral, and a brief information memorandum.

5.5.4. These documents shall be forwarded to the Assistant Administrator, OEOP. A Notice of Opportunity for Hearing will be issued within 30 days of the decision to move to enforcement.

## APPENDIX A. Complaint Procedures Flowchart



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## APPENDIX B. Additional Information on Complaint Procedures Under the Civil Rights Act of 1964 (Title VI), the Education Amendments Act of 1972 (Title IX), the Rehabilitation Act of 1973 (Section 504), and the Age Discrimination Act

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### B.1. Evaluating Complaints of Employment Discrimination

#### B.1.1. Title VI and Title IX Employment Complaints

B.1.1.1. While Title VI was not meant to be the primary Federal vehicle to prohibit employment discrimination (that vehicle is Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-1 - 2000e-17), it does forbid employment discrimination by recipients in certain situations. If a *primary objective* of the Federal financial assistance to a recipient is to *promote employment*, then the recipient's practices are subject to Title VI (42 U.S.C. § 2000d-3). In addition, a recipient's employment practices also are subject to Title VI where those practices *negatively affect the delivery of services to ultimate beneficiaries*. The following may be useful in conceptualizing Title VI's employment coverage:

##### a. Examples of "Primary Objective" Coverage.

(1) A recipient builds a temporary shelter with funds designed to provide temporary assistance to dislocated individuals. The employment practices of the recipient, with respect to the construction of such facility, are not subject to Title VI. However, if the recipient built the same facility with funds received through a public works program whose primary objective is to generate employment, the employment practices are subject to Title VI. [36]

(2) A school district employee claims a Title VI violation based on the assertion that Federal funds paid the employee's salary in part. The assertion is insufficient since the employee failed to show that the primary objective of the Federal funds was employment rather than general funding of school programs (*see Reynolds v. School District No. 1, Denver, Colorado*, 69 F.3d 1523, 1531-32 (10th Cir. 1995) (motion to dismiss granted due to plaintiff's failure to show that the primary purpose of Federal assistance was to provide employment)). [37]

##### b. Employment Practices Having a Negative Effect on the Delivery of Services to Ultimate Title VI Funding Beneficiaries: Courts have found this provision of Title VI's employment coverage applicable.

(1) Where "faculty integration is essential to student desegregation" (*see United States v. Jefferson County Board of Education*, 372 F.2d 836, 883 (5th Cir. 1966)); and

(2) Where patients of a state mental health system challenged segregated employment practices affecting delivery of services to patients (*see Marable v. Alabama Mental Health Board*, 297 F. Supp. 291, 297 (M.S. Ala. 1969)). [38]

c. Certain Title VI and Title IX employment complaints over which both OEOP and the U.S. Equal Employment Opportunity Commission (EEOC) may have jurisdiction must be "referred" to EEOC within 30 days of receipt of the complaints, in accordance with governmentwide regulations (29 CFR §§ 1691.1 - 1691.13). Also, under these regulations, all employment complaints over which OEOP lacks jurisdiction, but over which EEOC may have jurisdiction, must be "transferred" to EEOC.

B.1.1.2. Where OEOP receives a complaint of employment discrimination against a recipient that is covered by both Title VI (and/or Title IX) and Title VII, OEOP will refer the complaint to EEOC for investigation and conciliation. If EEOC determines that there is discrimination and is unable to resolve the complaint, OEOP will evaluate the matter, "with due weight to the EEOC's determination that reasonable cause exists," and take appropriate enforcement action (29 CFR § 1691.10(a)).



B.1.1.3. Where a complaint alleges a pattern and practice of discrimination and there is dual coverage, OEOP has the option of keeping the complaint rather than deferring it to EEOC.

B.1.1.4. The following guidelines apply to the handling of any Title VI or Title IX employment complaint. Within 10 days of OEOP's receipt of the complaint, OEOP will notify the recipient and complainant of the following:

a. That OEOP has received the complaint;

b. That OEOP will determine within 30 days of receipt of the complaint whether the complaint will be referred to EEOC; and

c. That OEOP's determination regarding whether the complaint is complete or timely under OEOP's case processing rules will be deferred until it has been determined whether OEOP or EEOC will investigate the complaint.

B.1.1.5. The letter to the recipient must also set forth the date, place, and alleged circumstances of the discriminatory act set forth in the complaint.

B.1.1.6. Within 30 days after the receipt of the complaint, OEOP will determine whether the complaint will be investigated by OEOP or referred to EEOC, and will so notify the complainant and recipient.

B.1.1.7. Where the entire complaint is referred to EEOC, the complaint will be closed. The letters notifying the complainant and recipient of referral to EEOC must state that OEOP is closing the complaint. No determination of completeness or timeliness need be made.

B.1.1.8. Where OEOP retains any portion of the complaint (e.g., allegations of discrimination in services), the original case will be closed upon referral to EEOC and a new case number assigned to the portion retained by OEOP.

#### B.1.2. Age Discrimination Complaints

B.1.2.1. An age discrimination complaint is timely if it is filed within 180 days of the date the complainant first had knowledge of the alleged discrimination.

B.1.2.2. OEOP does not have jurisdiction over employment complaints involving federally assisted programs and activities under the Age Discrimination Act.

B.1.2.3. Employment complaints filed by persons 40 and older are referred to the appropriate EEOC office, and the OEOP complaint is closed.

B.1.2.4. Employment complaints filed by persons under 40 are not within the jurisdiction of EEOC and may be closed with notice to the complainant that there is no jurisdiction under the Act.

B.1.2.5. If the complaint alleges age discrimination in employment that is within EEOC's jurisdiction and also contains allegations of discrimination in services within the jurisdiction of OEOP, the complaint is split into two separate cases. Each is given its own case number, the age employment complaint is referred to EEOC with the OEOP age employment case being closed, and OEOP proceeds with the age services complaint.

#### B.1.3. Disability Complaints

B.1.3.1. Disability employment complaints shall be closed if OEOP has no jurisdiction under Section 504. If the complaint is against an employer with fewer than 15 employees, it shall be referred to the DOJ. If the employer has 15 or more employees, the complaint shall be referred to the EEOC.

B.1.3.2. The handling of complaints over which OEOP has jurisdiction under Section 504 will vary depending on several factors. If the complaint is a pattern and practice complaint or an individual complaint that also has other nonemployment issues, it must be retained by OEOP. If the complaint is an individual complaint only, whether filed only with OEOP or with both OEOP and the EEOC, the complaint will be referred to the EEOC unless the complainant indicates a desire for it to remain with OEOP.

B.1.3.3. Thus, for single-issue individual employment disability complaints filed with OEOP only or with both OEOP and the EEOC, within 10 days of OEOP's receipt of the complaint, OEOP will notify the recipient and complainant of the following:

a. That OEOP has received the complaint;

b. That OEOP will refer the complaint to the EEOC unless OEOP receives a written request within 20 days that OEOP retains it;

- c. That there are differences in the processing of complaints under Section 504, and potential remedies may differ;
- d. That OEOP's determination regarding whether the complaint is complete or timely under OEOP's case processing rules will be deferred until it has been determined which agency will investigate the complaint.

B.1.3.4. If the complainant elects to have the complaint remain with OEOP, within 30 days OEOP must make the decisions regarding completeness and timeliness.

## **B.2. OEOP's Authority for Obtaining Information in Complaint Investigations**

B.2.1. OEOP has the right to complete access during a recipient's normal business hours to all information maintained by the recipient needed to determine compliance status on those issues under investigation. See 14 CFR § 1250.105 (c).

B.2.2. Generally, this includes access to oral information from a recipient's employees as well as to written or nonwritten information, such as electronic storage media, microfilming, retrieval systems, and photocopies maintained by the recipient. OEOP, not the recipient, decides what information is relevant to a determination of compliance.

B.2.3. OEOP has no legal authority to require the complainant or any other nonrecipients to provide information. (See below for enforcement action regarding any case where the complainant's refusal to provide information interferes with OEOP's ability to investigate the case.)

### **B.2.4. Limitations on Obtaining Information**

B.2.4.1. Actions Constituting Denial of Access. It is a clear denial of access to information when a recipient either explicitly or by its overall conduct:

- a. Refuses to permit OEOP access to written or unwritten information, such as electronic storage media, microfilm, retrieval systems, photocopies, and the recipient's facilities during the recipient's normal business hours;
- b. Refuses to permit OEOP access to employees during recipient's normal business hours;
- c. Fails to provide information to which it has access if one of its employees refuses to do so or to provide access to information maintained exclusively by an employee in his/her official capacity; or
- d. Refuses to complete Office of Management and Budget (OMB) approved compliance and survey forms relevant to an investigation (e.g., OS/CR 532-1 and 532-2 survey forms).

### **B.2.4.2. OEOP's Response to Refusals to Provide Data or Access to Witnesses.**

In instances where the recipient states an intent to refuse to provide OEOP with requested information or access to records or witnesses, OEOP will do the following:

- a. If the refusal is stated orally, either in person or over the telephone, the investigator shall attempt to ascertain the exact basis for the recipient's refusal, and, where possible, attempt to explain OEOP's authority or provide other information to address the recipient's concerns.
- b. If the investigator is unable to obtain access to the requested information, the investigator shall consult with OEOP staff (when onsite, this shall be done over the telephone whenever possible before the investigator leaves the recipient's premises). Where appropriate, OEOP staff shall discuss the refusal to provide information directly with the recipient's representative.

B.2.4.3. Where attempts to persuade a recipient to provide information have failed, a letter shall be prepared, by OEOP staff, setting forth OEOP's authority to obtain access to the information and addressing as fully as possible any particular concerns expressed by the recipient.

B.2.4.4. Whenever the office determines that voluntary compliance cannot be achieved (generally not to exceed 90 days from the date of the request), the case shall be referred for enforcement.

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## APPENDIX C. Additional Information On Enforcement Of Executive Order 13160

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### C.1. Relationship with other laws, Regulations, and Executive Orders

C.1.1. In cases where a complaint raises claims under both Executive Order 13160 and Executive Order 11478 (but does not raise statutory claims), since NASA does not have a complaint procedure for claims arising under Executive Order 11478, the complaint will be processed in accordance with the procedures for Executive Order 13160 as set forth above. If a complainant raises claims under Executive Order 13160, Executive Order 11478, and an EEO statute (including Title VII of the Civil Rights Act of 1964, Section 501 of the Rehabilitation Act of 1973, or the Age Discrimination in Employment Act of 1967), the complaint will be consolidated and adjudicated under NASA's EEO procedures.

C.1.2. As a practical matter, this means that a NASA employee seeking to file a complaint under this Executive Order must indicate whether the complaint is related to his or her employment and, if so, whether he or she has filed any other EEO claims arising out of the same circumstances.

C.1.2.1. If the employee has filed an EEO claim, the complaint filed under the Executive Order will be transferred to the appropriate NASA Center and the enforcement procedures set forth above will be deemed inapplicable.

C.1.2.2. If a NASA employee chooses to proceed solely under this Executive Order, the enforcement procedures set forth above will govern the disposition of his or her complaint.

C.1.2.3. If a NASA employee indicates that he or she has not filed any other EEO complaints at the time of filing a complaint under this Executive Order, the employee may nevertheless subsequently elect to file a related complaint under Title VII, Section 504, or the ADEA, provided the employee follows the appropriate EEO procedures. In such cases, the employee shall notify OEOP that he or she has decided to file an EEO complaint so that the Executive Order 13160 complaint may be transferred to the appropriate office as provided for above. OEOP will ensure that all NASA employees filing Executive Order 13160 complaints have adequate notice that they shall advise OEOP about their complaint if they decide to pursue their claims through the EEO process.

C.1.3. Enforcement procedures set forth in this directive may govern the resolution of a complaint filed by a Federal employee who is employed by an agency other than NASA and/or is involved in a training program conducted by NASA.

### C.2. Reporting Requirements

C.2.1. For the first 3 years following issuance of the Executive Order, OEOP will file annual reports with the Attorney General that summarizes the number, nature, and disposition of complaints filed under the Executive Order.<sup>[39]</sup>

C.2.2. OEOP will submit such reports to the Assistant Attorney General for Civil Rights within 90 days of the end of the preceding year's activities.

C.2.3. OEOP will submit subsequent reports every 3 years and within 90 days of the end of each 3-year period.

<sup>[1]</sup> This agreement delegates authority to the Department of Education to receive complaints of discrimination and conduct pre- and postaward compliance reviews of public elementary and secondary schools and institutions of higher education receiving NASA financial assistance. *See* 52 Fed. Reg. 43385 (November 12, 1987).

<sup>[2]</sup> *See* Note 1 above.

<sup>[3]</sup> This document provides detailed policy and enforcement guidance on Executive Order 13160 for Federal agencies.

It may be accessed at <http://www.usdoj.gov/crt/cor/Pubs/13160guid.htm>.

[4] DOJ's Title VI Investigations Manual is an invaluable resource, providing comprehensive information on conducting Title VI complaint and compliance review investigations. It may be accessed at <http://www.usdoj.gov/crt/cor/Pubs/manuals/complain.html>.

[5] Like the Title VI Investigations Manual, DOJ's Title VI Legal Manual provides comprehensive information. It may be accessed at <http://www.usdoj.gov/crt/cor/coord/vimanual.htm>. A careful reading of this manual is essential to a complete understanding of the legal underpinnings of investigative procedures set forth in this manual.

[6] The DOJ Title VI Investigations Manual states that for a complaint to be "complete" the following information is required: (1) a way to contact the complainant; (2) the basis of the complaint, i.e., identification of the person or group injured by the alleged discrimination; (3) the respondent, i.e., identification of the person or institution alleged to have discriminated; and (4) sufficient information to understand the facts that led the complainant to believe that discrimination has occurred and when the discrimination took place. DOJ Title VI Investigations Manual, p. 16.

[7] Under Executive Order 13160, Sec. 2-203, the Attorney General is authorized to make a final determination as to whether a program falls within the scope of education, training programs, and activities covered.

[8] 42 U.S.C. §§ 2451 et seq., National Aeronautics and Space Act of 1958, as amended.

[9] It shall be noted that the variation in scope and coverage as between the authorities listed in 3.1.1. causes a problem with terminology, specifically the term to be used to denote the respondent of a complaint filed pursuant to one or more of these authorities. Prohibited discrimination pursuant to Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, and the Age Discrimination Act of 1975 is limited to Federally assisted programs and activities. Therefore, in complaints filed pursuant to one or more of these laws, the complaint respondent will be a "recipient" of Federal funds. Prohibited discrimination pursuant to Section 508 of the Rehabilitation Act of 1973 and Executive Order 13160, is limited to Federally conducted programs and activities. The term "conducted" refers to programs and activities implemented by a government agency itself. Therefore, for purposes of this manual, a "respondent" in a complaint brought pursuant to one of these authorities will be NASA (or a NASA component installation). Section 504 of the Rehabilitation Act of 1973 covers discrimination in both Federally assisted and conducted programs and activities. For the sake of convenience, this manual will refer to all complaint respondents, whether a "recipient" of NASA funds, or NASA itself, as "respondent."

[10] See also Appendix A, which contains a flow chart of the complaints process.

[11] DOJ's Title VI Investigations Manual notes that the receipt date of a complaint shall always be noted by the receiving agency immediately upon receipt. The manual states that "This is important because the date [the] agency receives the complaint may be what ultimately determines the complainant's ability to seek redress of alleged discrimination, even if [the] agency is not the appropriate agency to investigate the complaint. The receipt date by a Federal agency becomes the receipt date for other Federal agencies." DOJ Title VI Investigations Manual, p. 10.

[12] The DOJ Title VI Investigations Manual states that for a complaint to be "complete" the following information is required: (1) a way to contact the complainant; (2) the basis of the complaint, i.e., identification of the person or group injured by the alleged discrimination; (3) the respondent, i.e., identification of the person or institution alleged to have discriminated; and (4) sufficient information to understand the facts that led the complainant to believe that discrimination has occurred and when the discrimination took place. DOJ Title VI Investigations Manual, p. 16.

[13] See n. 10 for a discussion on receipt date.

[14] Such notice will contain the following information: (1) any individual filing a complaint may be represented and assisted in all stages of these proceedings by an attorney or representative of his or her own choosing; (2) an individual has a responsibility to promptly inform OEOP if legal counsel is retained, and an individual has an obligation to notify OEOP if he or she wishes to have any other representative included in these proceedings; (3) it is the responsibility of the complainant to provide OEOP with the name, address, and telephone number of any attorney or other representative; and (4) it is an ongoing responsibility of the complainant to advise OEOP as to any changes with respect to the status of his or her legal representative or other representation.

[15] If information establishes that NASA has no jurisdiction over the subject matter or institution alleged to have discriminated, it is not necessary to inquire further about the factual bases for the complainant's belief that discrimination has occurred.

[16] Note that NASA's regulations describe the specific type of conduct its laws prohibit. If a complaint is not filed against an institution NASA covers, or if the complaint does not state a claim under the laws NASA enforces, NASA

will not proceed further with the complaint.

[17] See Appendix B for procedures on handling complaints of employment discrimination under Title VI, Title IX, Section 504, and the Age Discrimination Act; see <http://www.usdoj.gov/crt/cor/Pubs/13160guid.htm> with respect to jurisdictional issues pertaining to NASA employees in the context of complaints filed under Executive Order 13160.

[18] The use of the "180-days" requirements does not change the "90-days" requirement set forth in NASA's regulations or the Director of OEOP's responsibilities to enforce NASA's Title VI regulations.

[19] DOJ regulations state that "an agency will allow complainants 180 days to file a , complaint, although the Agency may exercise its discretion and accept a complaint filed later in time." See, e.g., 28 C.F.R. § 42.107(b). DOJ has indicated in policy guidance (Title VI Legal Manual and Title VI Investigative Manual) that agency "designated officials" (in NASA's case the Assistant Administrator for Equal Opportunity Programs) are vested with the authority to grant such waivers under certain circumstances. See DOJ, Title VI Legal Manual, §X(C) and Title VI Investigations Manual, § III(5)(A). For circumstances under which a waiver of the 180-day filing requirement may be granted see 3.4.6.4 .

[20] These reasons apply to individual (as opposed to class) complaints, unless so stated.

[21] See Section 3.5 on Alternative Dispute Resolution (ADR).

[22] Information collected pursuant to a Title VI complaint/compliance investigation is NASA Administratively Controlled Information and subject to the provisions of NPG 1620.1A, Security Procedural Requirements-- w/Change 1 (9/13/02), identifying procedures for identifying and storing NASA ACI.

[23] References to such staff in the context of conducting ADR includes staff at the Agency level and the Center level.

[24] See DOJ Title VI Legal Manual, § VIII, and DOJ Title VI Investigations Manual, § V(3)(a)-(c), for detailed discussion and analysis of disparate treatment; disparate impact; national origin/limited English proficiency; and retaliation in the context of Title VI and other nondiscrimination statutes (See also U.S. Department of Justice, "Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs," 66 Fed. Reg. 5397-5410 (January 18, 2001)).

[25] Information collected pursuant to a Title VI complaint/compliance investigation is NASA Administratively Controlled Information and subject to the provisions of NPG 1620.1A, Security Procedural Requirements-- w/Change 1 (9/13/02), identifying procedures for identifying and storing NASA ACI.

[26] DOJ Title VI Investigations Manual, p. 100.

[27] See section on "The Interview Process" below.

[28] DOJ Title VI Investigations Manual, p. 80.

[29] For a detailed discussion on evidence in the complaint investigation process, see DOJ Title VI Investigations Manual, pp. 79-100. Information collected pursuant to a Title VI complaint/compliance investigation is NASA Administratively Controlled Information and subject to the provisions of NPG 1620.1A, Security Procedural Requirements-- w/Change 1 (9/13/02), identifying procedures for identifying and storing NASA ACI.

[30] See Appendix D for enforcement action under Title VI, Title IX, Section 504, and the Age Discrimination Act.

[31] See USCCR Title VI Report, p. 147.

[32] Ibid.

[33] Ibid.

[34] Ibid.

[35] See §§ 3.7.1.3., 3.7.1.4. on preparing the LOF.

[36] See U.S. DOJ, Civil Rights Division, Coordination and Review Section, *Title VI Legal Manual*, Sec. IX(A).

[37] See id.

[38] See id. See id. id.

[39] NASA filed the first of these reports on March 31, 2002. The final report will be issued in 2004.

